

CHAPTER ONE INTRODUCTION

Abstract:

This chapter discusses India-Nepal water relations, defines the problem and highlights its significance, presents the research questions and proposes major hypotheses to be explored in this study. This chapter also gives a detailed review of literature available in the area of water relations between India and Nepal discussing the prevailing three broad streams of opinion, which take confrontational, cooperative and neutral approaches. Besides, this chapter also mentions the theoretical frameworks applied in this research which include International Law, Power Politics of Realism and Dependency. The research methodologies used in the research are document analysis, elite interview, surveys and field visits. Finally, this chapter gives a brief account of the organisation of the study.

Definition of the Problem

Nepal is rich in water resources with 237 billion cubic metres of average annual potential of internal renewable water.¹ It has over six thousand rivers and rivulets with a total length of about 45,000 km.² It is second only to Brazil in hydropower potential in the world with 83,000 megawatts of potential hydroelectricity. More than a half of the potential is economically feasible. Paradoxically, only a little over one per cent of the potential electricity has so far been generated in Nepal; and only a little over forty per cent of Nepalese people have access to electricity. Besides, Nepal's agricultural hub in the southern part of the country needs irrigation facilities. However, due to the lack of awareness, financial capacity and technical expertise, Nepal has so far not been able to develop and harness its water resources adequately. On the other hand, the Northern part of India, especially Bihar and Uttar Pradesh states, is in need of a large quantity of power; and the fertile Gangetic plains of India are in great need of water for irrigation. The rivers flowing from Nepal are the only viable sources for irrigating the Indian plains. Against such a background, there are real potentials, possibilities, and a necessity for jointly harnessing and developing Nepal's water resources for the benefit of both India and Nepal.

All of Nepal's rivers drain into the Ganges River in India. Traditionally, both countries had been using the waters of these rivers in their own way. It was only in 1920 that India and Nepal formalized the sharing of rivers flowing from Nepalese territory into India, with the signing of the exchange of letters on the Sharada Barrage. Since then, the two countries have concluded a number of agreements on sharing of water resources. The main among them are the Koshi Agreement of 1954, Gandak Agreement of 1959, Tanakpur Agreement of 1991 and the Mahakali Treaty of 1996. Ever since the exchange of letters in 1920, India has taken undue advantage from the water treaties with Nepal. There are a number of international agreements regulating the sharing of international water courses. There are also customary practices that can guide such sharing. Moreover, Nepal is an upper riparian state, which

¹ Toufik A Siddiqui and Shirin Tahir-Kheli (coordinators and editors), *Water Needs in South Asia: Closing the Demand Supply Gap* (Honolulu, Hawaii: Global Environment and Energy in the 21st Century, 2004), pp. 7-8.

² Ajay Mani Dixit, "Resource Endowment and Uncertainty of water Resources" in *Water Resource Development: Nepalese Perspective*, (Delhi: Konark Publishers, 1995), p. 22.

arguably can have an upper hand in utilizing and regulating its water courses. Still, it has not been able to get its rightful share in the rivers it shares with India.

Map of India and Nepal, with other SAARC countries (Afghanistan, Bangladesh, Bhutan, Maldives, Pakistan and Sri Lanka)



Source: online.atlas/india-map.htm

From the very beginning, i. e. from the exchange of letters of 1920, India-Nepal water treaties³ are unequal. They seem to ignore international law, prevailing practices and also the principles of equity and justice. There are grievances among the Nepalese people that India, as a big and powerful neighbour, has taken undue advantage from the agreements on Nepal's water resources, and is "intent on securing deals favourable to it at the expense of its smaller

³ In this research, the terms treaty and/or agreement include any type of understanding, such as MoUs, treaties, agreements, Exchange of Letters, Protocols, etc. concluded between India and Nepal.

neighbours".⁴ India's behaviour with other neighbours like Bangladesh, Bhutan and Pakistan has contributed to vindicating this grievance among the Nepalese people. On the other hand, there are views in India that Nepalese politicians are "rendered so paranoid by nationalist sentiments that they were incapable of striking sensible deals with New Delhi".⁵ Against such a background, it is interesting to study whether the water-related treaties between India and Nepal are based on equal and equitable rights, as provided by international law, or were influenced by India's power politics, making them one-sided and giving India undue advantage over Nepal. Besides, it is also interesting to find out why Nepal agreed to sign the unequal treaties with India. Is it India's power politics that compelled Nepal to conclude the treaties? Or, is it due to Nepal's own weaknesses- economic weakness, lack of public awareness and ignorance, and carelessness of Nepal's contemporary rulers- that made Nepal conclude such agreements with India? Moreover, why was it that water treaties between India and Nepal, concluded as recently as 1991, are unequal and one-sided? Such questions are very important and this study tries to find answers to these questions.



Source of the map: www.mapsofworld.com

⁴ Surya P. Subedi, "Hydro-Diplomacy in South Asia: The Conclusion of the Mahakali and Ganges River Treaties" in *The American Journal of International Law*, Vol. 93, No. 4, (October 1999), p. 954.

⁵ "Nepal and India: Splashing Out" in *The Economist* (London, 25 January 1997), p. 79

Significance of the Problem

Going through India-Nepal water treaties, one feels that they are not agreements reached between two sovereign states on the basis of equality. They seem to give a message that India was in a giving position and Nepal at the receiving end. For example, the 1920 Exchange of Letters, which has been incorporated in the 1996 Mahakali Treaty, says, "Nepal shall have right to a supply of 28.35 m³/s (1000 cusecs) of water....",⁶ whereas the understanding does not mention the share for India. Similarly it also states that India shall maintain a flow of not less than 350 cusecs downstream of the Sharada Barrage; that Nepal shall have the right to a supply of 1000 cusecs of water and 70 million kw/hour (unit) of electricity annually (the total capacity is 448.4 million kw/hour) for giving its consent to use a piece of its land of about 577 metres to India for the construction of eastern afflux bond. Similarly, there are unequal provisions in the Koshi, Gandak and Tanakpur agreements as well. The 1996-Mahakali treaty is, however, regarded as a treaty based on equal rights and obligations between India and Nepal. The Treaty mentions the "desirability (of the two Governments) to a treaty on the basis of equal partnership to define their obligations and corresponding rights and duties thereto...".⁷ However, differences have surfaced between India and Nepal during the negotiations on the preparation of the Detailed Project Report (DPR), without which the Treaty cannot be implemented. Then, a big question arises: why did Nepal sign such treaties with India? The significance of the problem lies, first, in that none of the existing literature has ever tried to study why Nepal did agree to conclude the treaties with India. Thus, this study can fill the gap in existing literature in the area. Second, finding an answer to this question can explain Nepal's compulsion to conclude the agreements. Nepal's compulsions also can be generalized as to why and how weak and smaller states are forced to conclude unequal treaties with their powerful neighbours. Third, this question has policy relevance as well. Nepal is suffering from long hours of daily power cuts; large chunk of its arable fields still lack irrigation facilities; the people are suffering from deadly and serious floods every year, most of which are caused by constructions by India. Finding answer to the question can also be useful in understanding how far the Indo-Nepal water treaties have constrained the Nepalese government from taking necessary measures to redress the difficulties being faced by its people.

Research Questions

This study tries to answer the following major questions:

1. Are Nepal-India water treaties based on equitable rights and obligations?
2. Why did Nepal agree to conclude unequal treaties with India?
3. Do political system and the level of public awareness impact upon states on matters relating to treaties with other states?

Hypotheses

The following hypotheses have been proposed, and will be tested against the facts collected from the sources mentioned in research methodology section:

1. The water treaties between Nepal and India are not based on equality from the perspectives of international law and prevailing practices.

⁶ Treaty of Mahakali, 12 February 1996, Article 1. For the text of the Treaty, please visit www.moen.gov.np.

⁷ Preamble to the Mahakali Treaty, 1996. For the text of the Treaty, please visit www.moen.gov.np.

2. Nepal concluded the unequal treaties with India mainly due to its economic weakness, lack of awareness, and the vested interests of ruling elites. India's power politics and willingness to take advantages from Nepal's weakness also played important role on this matter.
3. Democracy, public awareness and growing international exposure and interaction help constraining governments from reaching one-sided agreements with their neighbours.

Literature Review

For Nepal, its water resources are considered very important. It is as one of the main resources available in the country. It is also estimated to be the single largest contributor to Nepal's economy if harnessed properly and to its full potential. In spite of its importance for the country's economy, the literature on water resources in Nepal and India-Nepal water relations is not in abundance. In Nepal, there are a limited number of books and/or other publications on India-Nepal water relations, and the same is the situation in India and elsewhere.

Mostly, the literature available on India-Nepal water relations is centred around the explanation of hydropower potentials of Nepal's rivers and the usefulness of bilateral cooperation between India and Nepal in the development of hydropower projects in Nepal. Some authors, especially in Nepal, have concentrated on the water treaties between India and Nepal with unsubstantiated statements and comments on the unequal nature of the earlier treaties between the two countries. But, they have not tried to establish why and how the treaties can be said to be unequal or inequitable. Broadly, three separate streams can be identified in the literature available on India-Nepal water relationship:

- a) three approaches prevailing in Nepal: one, rather hard-liner, blaming India for everything and suggesting that India's involvement in the development of Nepal's water resources is, and will remain, disadvantageous for Nepal. The second view is relatively moderate and more balanced, and suggests enhanced but cautious cooperation with India. The third school of thought in Nepal believes that waters from Nepalese rivers are as important and critical for India as the Nile River is for Egypt. This school also believes that India wants to establish hegemony and full control over Nepal's water resources, and develop them at its own pace.
- b) broad perspectives prevailing among Indian authors which underscores Nepal's rigidity and resentment; and calls for further open and forthcoming response from Nepal.
- c) perceptions among other countries, especially in the neighbourhood.

These streams are discussed below in some more details.

A. Approaches prevailing in Nepal

i) The Hard-line Approach: In Nepal, there is a general consensus on the importance of water resources for the country's development. There is also no disagreement that involvement of foreign governments/firms/individuals is necessary for harnessing the

potentials in this area.⁸ However, as regards the involvement of India in exploiting Nepal's water resources, two approaches dominate the discussions. One holds the view that India has always tried to "deceive" Nepal while utilising Nepal's rivers, and has taken undue benefits from all projects. These authors cite the examples of all earlier projects, which were mainly designed for irrigation, generation of electricity and floods control. Proponents of this approach seem more hard-liner, less flexible and uncompromising. For example, Mr. Aditya Man Shrestha says,

For several decades, India was the only country interested in water projects. Whatever transpired between the two countries (India and Nepal) always invariably went in favour of India. The projects stand today as monuments to Nepal's exploitation by Brother India. It was a sort of techno-political trap Nepal succumbed to as a price for Indian support for Nepal's freedom from its own Rana rulers.⁹

Mr. Shrestha is highly critical of Indian policy vis-à-vis Nepal. He terms the Mahakali Treaty a "Pandora's box overflowing with all the intricacies that one could possibly conceive of in its technical, financial, diplomatic and political terms"¹⁰. He goes on to say that the project, which is "a big enigma", is in no way beneficial to Nepal: neither in terms of income or electricity or irrigation nor in the share of water. He is pessimistic that the project cannot be a success story. "Apart from the yawning gaps between the estimated benefits to India and Nepal, the treaty is full of faults", he says, and concludes that "this means that controversies will continue to pester the project throughout".¹¹ Mr. Shrestha represents a considerably large number of persons interested in this field as well as political activist of certain orientation. Mr. Chetendra Jung Himali, an ultra-nationalist activist, is another critic of Indian policy and position vis-à-vis Nepal. In his book, *Mahakaliwari, Mahakalipari*¹², written in Nepali language, he states, it is known to everybody that the three-party Government led by Nepali Congress concluded the treaty on Mahakali, in contravention of Nepal's constitution and violating the sovereignty of Nepal. This has darkened the image of the country".¹³ He also announced in the same book that the legal existence of Mahakali Treaty has ended.¹⁴ Another political activist, Mr. Keshab Lal Shrestha, writes that the ratification of the Mahakali Treaty by Nepal's Parliament is yet another example of the servility and submission of national

⁸ Renowned critics, too, are open to foreign investment in the area of water resources. For example, Mr. Aditya Man Shrestha writes, "Going by the estimates for the investment needed to maximize electricity generation from hydropower projects, Nepal needs roughly \$ 80 billion to generate 42,000 MW. For 25,000 MW the estimated need stands at \$ 50 billion. As Nepal's national annual budget hovers around the one billion dollar mark, exploiting water on her own is unthinkable. Hence, there is no alternative to enlisting international support, be it direct investment, grants or aid." (*Bleeding Mountains of Nepal*, Ekata Books, Kathmandu, 1999, p. 150).

⁹ Aditya Man Shrestha, *Bleeding Mountains of Nepal* (Kathmandu: Ekata Books, 1999), p. 150

¹⁰ *Ibid*, p. 178

¹¹ *Ibid*, pp. 179-80

¹² Chetendra Jung Himali, *Mahakaliwari, Mahakalipari* (This side and that side of Mahakali, in Nepali language) (Kathmandu: Deshbhakta Prajatantrik Manch, 2001).

¹³ *Ibid.*, pp. 79-80

¹⁴ *Ibid*.

interest to foreign powers by Nepal's rulers with an objective of saving their regime.¹⁵ There are a number of other writers who have taken this line. Prof. Surya Subedi sounds less critical when he says,

However, many Nepalese took the view that India was keen to exploit Nepal's hydropower potential to its advantage. This opinion was based on Nepal's experience with the Koshi and Gandak agreements in the 1950s under which India secured disproportionate benefits to Nepal's detriment. What is more a large area of Nepal bordering India was submerged by the execution of these projects meant to benefit India, with Nepal on the receiving end of the negative impact of the projects.¹⁶

ii) The Moderate Approach: The second approach prevailing in Nepal seems more rational, flexible and compromising. This stream holds a view that India's involvement in developing Nepal's water resources is a must and that both sides should take lessons from their past mistakes. They feel that there is no better alternative to India's involvement in harnessing Nepal's water resources. Those belonging to this school maintain that it is in the mutual interest of both countries. Moreover, as development of Nepal's water resources is India's vital interest, its involvement is, in a way, unavoidable. These people also feel that the past agreements between Nepal and India are unequal; and this is the reason why Nepalese leaders seem over-sensitive and hesitant to conclude agreements with India. Dr. Dwarika Nath Dhungel says,

There is no denying the fact that there is a general feeling in Nepal that the country has not been fairly treated in relation to the earlier water resource-related treaties. Also, water, over time, has become a sensitive issue for the people of Nepal. There is a need to sensitise all the stakeholders about the cost and benefits of both cooperation and non-cooperation with a view to gaining their support. Therefore, instead of considering the psychology of the people of Nepal as narrow nationalist sentiments and citing the provisions of the 1950 treaty or the draft treaty submitted to Nepal by India in 1990 for cooperation in water resources, the people of Nepal have to be assured that they have been or will be fairly treated in relation to this sector. This pre-supposes a change of the mind-set of the policymakers and those who have influence in the process.¹⁷

Ajay Dixit, for example, feels that both India and Nepal intended to irrigate their lands, generate electricity and control floods through bilateral treaties on water resources. As India had borne total cost of the earlier projects, i. e. Sharada Barrage, Koshi and Gandak projects, and Nepal did not make any investment, there was no Nepali representation in the decision making process.¹⁸ Mr. Dixit has suggested a number of measures on how the both countries can equitably benefit from water projects. His suggestions include proper institutional

¹⁵ Keshavlal Shrestha, *Mahakali Treaty and the Question of National Interest* (in Nepali, Mahakali Sandhi ra Rastriya Hitko Sawal) (Kathmandu: Sumitra Shrestha, 1996), p. 47.

¹⁶ Surya Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*, (New Delhi: Oxford University Press, 2005), pp. 120-21.

¹⁷ Dwarika N. Dhungel, "Nepal-India Water Resources Relationship: Looking Ahead" in *India-Nepal Relations: The Challenges Ahead* (Delhi: Rupa and Co., 2004), pp. 185-86.

¹⁸ It may be noted that all these projects were conceived by, and in, India, details were prepared by India, and were presented to Nepal side for its approval.

arrangements for benefiting from the projects, involvement of people's organizations, accurate record keeping by a joint committee, involvement of local stake-holders, etc., just to name a few.¹⁹ This stream of authors suggests that both Nepal and India should learn from past mistakes and rectify them in future agreements; that views of the peoples should be taken into consideration while concluding agreements; that civil society organization can play important role in this area; and that environmental and social aspects should be given due priority. Dipak Gyawali has widely written on the subject. His views, too, are balanced and more realistic. He feels that only India should not be blamed for past mistakes, and that Nepal side is equally responsible for what has happened.²⁰ As regards the Pancheshwar Project, Mr. Gyawali is not happy, and says-

That what should never have happened- the ratification of an unequal and incomplete Mahakali treaty by parties and leaders sitting in Nepal's sovereign parliament- has happened. A treaty is now in effect wherein Nepal's water rights have been specified but not India's, where a joint detailed project report (DPR) was not prepared beforehand, where the ownership status of the head and the tail reaches of the Mahakali remains contested and in which nothing is clear either about the price at which generated electricity will be bought and sold or the principle by which such a price is to be fixed. What is to be done next?²¹

Mr. Gyawali is not against the treaty as such, and has suggested certain measures so as to make it mutually and equitably beneficial. Such measures include serious care to be taken while preparing the DPR including matters relating to rights protection, handling technical intricacies, detailed basin study, consideration of water science, addressing geological questions, sedimentation study, consideration for dam height, resettlement and macro-economic impact study. Other authors belonging to this stream include Dr. Dwarika Nath Dhungel, Shanta Bahadur Pun, Anand Bahadur Shrestha, Som Nath Poudel, Dr. Surya P. Subedi, etc.²²

There are other writers which have contributed to the literature on Nepal-India water relations. For instance, in *Water Resource Development, Nepalese Perspective*, Dr Bhekh Bahadur Thapa and Bharat B. Pradhan talk about the importance of water resources for Nepal's economic development, and the opportunities available for Nepal and India to use water resources for mutual benefit. They discuss about Koshi and Gandak agreements, but do not suggest any appropriate model for future cooperation. Surya Nath Bastola, in *Water Resource Development of the Mighty Himalayan Rivers*, discusses about the abundant opportunities presented by the rivers flowing through Nepal, and the possibility of utilizing them for Nepal's development. He, too, does not discuss much about earlier agreements with its southern neighbours nor suggests any model for future cooperation. Similarly, Chandra

¹⁹ For details, please see Ajay Dixit, *Dui Chhimekiko Jalayatra* (Water Journey of Two Neighbours, in Nepali) (Kathmandu: Actionaid Nepal and Nepal Water Conservation Foundation, 2002).

²⁰ "Mahakali Treaty: What Next" in *Water in Nepal* (Kathmandu: Himal Books and Panos South Asia with Nepal Water Conservation Foundation, 2001), p. 53.

²¹ "Mahakali Treaty: What Next" in *Water in Nepal* (Kathmandu: Himal Books and Panos South Asia with Nepal Water Conservation Foundation, 2001), p. 53.

²² Views of these intellectuals can be found, inter alia, in Dr. Dwarika Nath Dhungel and Shanta B. Pun, *The Nepal-India Water Relationship: Challenges* (Springer, Science + Business Media B. V., 2009).

K. Sharma, in *A Treatise on Water Resources of Nepal*, talks about Nepalese river system and their potential to contribute to Nepal's economic development.

iii) *The Nile Syndrome: a less-highlighted approach:* There is another approach taken by few authors on the compulsion of India to use waters of the rivers flowing from Nepal. According to the supporters of this stream, the fertile Gangetic plains in northern India, Bihar and Uttar Pradesh, in particular, cannot survive without the waters from Nepalese rivers for their irrigation. It is equated with the compulsion of Egypt to use the water of the Nile River for consumption, and holds the view that, as Egypt cannot survive without the Nile River, the northern parts of India cannot survive without the water from the rivers flowing down from Nepal. This approach tries to explain why India has taken so deep interest in the water resources of Nepal. But, this approach has not been much highlighted in either country, or elsewhere. Bikas Thapa, a Nepali author, has tried to underscore this point in his book, *Nepalma Jalavidyut* (Hydropower in Nepal).²³

B. Approaches in India

Scholars and experts in India have taken more or less uniform line as regards the harnessing of Nepal's rivers for mutual benefit. There is a general understanding that harnessing of Nepal's water resources is equally important for both India and Nepal. There is no viable alternative to using the rivers flowing down from Nepal in irrigating the fertile Gangetic plains; electricity generated from these rivers is the best viable source of energy for Northern India, and working together with Nepal is a must in mitigating and controlling the damages caused by floods every year. Prominent among the authors who have written on Nepal-India water relations are B. G. Verghese, Ramaswamy R. Iyer, B. C. Uprety, etc.

B. G. Verghese and Ramaswamy R. Iyer, in *Harnessing the Eastern Himalayan Rivers: Regional Cooperation in South Asia*, have discussed about the need for exchanging and promoting cooperation among the riparian countries. They try to advise Nepal to be further forthcoming and mention the benefits Nepal can get by concluding water treaties with India. B. G. Verghese takes broader perspective, and is in favour of more institutionalized approach with India's neighbouring countries, Nepal, Bangladesh, Bhutan, and also China. He favours the establishment of "suitable instrumentalities and corporate or inter-governmental mechanisms".²⁴ He also seems to support a programme for joint development of river basins. His book, *Waters of Hope: Facing New Challenges in Himalaya-Ganga Cooperation*,²⁵ is yet another example. In another article, Mr. Verghese says,

A rather pessimistic view has been taken of what has happened in the past. Certainly many things have not gone well as they should have with regard to some earlier Indo-Nepal projects. But steps have been taken periodically to try and overcome irritants and resolve issues and there has been a forward movement. Little hiccups and past grievances should

²³ Bikas Thapa, *Hydropower in Nepal*, (Kathmandu: Phoenix Books, 2011).

²⁴ B. G. Verghese, *Waters of Hope: Facing New Challenges in Himalaya-Ganga Cooperation* (New Delhi: India Research Press, 2007), p. 395

²⁵ *Ibid.*

*not, therefore, divert us from the larger vision of what is possible and feasible within a cooperative framework beneficial to both sides.*²⁶

Ramaswamy R. Iyer is more particular. He has written extensively on India's water relations with its neighbours,²⁷ but, is not very happy and comfortable with Nepal's nationalistic posture. In one of his articles, he goes to the extent of suggesting to scrap old agreements including Koshi, Gandak and Mahakali, and stop talking about other big projects; and not to "seek excessive closeness with Nepal; let not Nepal feel threatened; aim at friendliness, correctness and reasonable distance."²⁸ In *Politics of Himalayan River Waters: An Analysis of the River Water Issues of Nepal, India and Bangladesh*, B. C. Uprety discusses about the possibilities of utilizing the waters available in the rivers in Nepal, Bangladesh and India for their benefit. As has been noted above, most of the Indian writers have taken more or less similar views.

C) Views among other countries

Nepal-India water relation is an area which has attracted attention of virtually the whole world. Famous and popular news media broadcast and publish reports on Nepal-India water relations. BBC reports on this issue, and prestigious magazines like the *Economist* publish articles on this topic. Nepal-India water relations have been taken as examples while studying such or related issues between different countries. Such reports or writings in international news media or other studies are balanced and factual, and support mutually beneficial approach by both Nepal and India. As most of them have no vested interests, it is understandable that they present their views in a balanced manner.

Salman M. A. Salman and Kishor Uprety, discuss and analyse the unequal treatment the major agreements mete out to Nepal. In *Conflict and Cooperation on South Asia's International Rivers: a Legal Perspective*²⁹, they thoroughly analyse the major agreements between Nepal and India. Their focus, however, is on the legal aspect of the treaties. Besides, *Water Sharing Conflicts between Countries, and Approaches to Resolving them*, a WASSA (Water and Security in South Asia) Project Report coordinated by Umesh Parajuli, mentions some of the disputes among South Asian countries including Nepal and India. But, this report also does not suggest any viable model for the future.

However, views expressed in the neighbourhood, especially in Bangladesh and Pakistan, are mostly critical of India's behavior. As India has water relations and agreements with both Bangladesh and Pakistan, it is natural that this matter is discussed in public. Many of

²⁶ B. G. Verghese, "Harnessing of water Resources: India-Nepal Relations" in *India-Nepal Relations: The Challenges Ahead* (Delhi: Rupa and Co., 2004), p. 205.

²⁷ Ramaswamy R. Iyer, *Water: Perspective, Issues, Concerns* (New Delhi: Sage Publications, 2003), and *Towards Water Wisdom: Limits, Justice, Harmony* (New Delhi: Sage Publications, 2007) can be cited as examples.

²⁸ 'India's Water Relations with Her Neighbours', a paper presented by Mr. Iyer at the New School University, New York, on 3 November 2008.

²⁹ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers: a Legal Perspective* (Washington D. C.: The World Bank, 2002).

Bangladeshi writers have complains against India about the history of Ganga Agreement. Similarly, many in Pakistan are critical of India's behaviour as an upper riparian vis-à-vis Pakistan. The authors in Bangladesh and Pakistan have cited India-Nepal water treaties and India's behavior with Nepal to substantiate their claim that India's behavior with its neighbours is unilateral and an example of high-handedness. *Water Needs in South Asia: Closing the Demand Supply Gap*, coordinated and edited by Toufik A. Siddiqui and Shirin Tahir-Kheli, is such an example.

All of the three streams have discussed India-Nepal water relations in some details, and have also mentioned, though not systematically and in greater details, the unequal nature of India-Nepal water treaties. But, neither of them has tried to answer the question why Nepal agreed to conclude the unequal treaties with India. Thus, there is a gap in the available literature as regards why smaller countries are compelled to conclude unequal agreements with bigger countries. This study tries to fill this gap and, thus, contribute to the body of knowledge in this area.

Theoretical Framework

The power relationship between India and Nepal reverberates what the Athenians said to the Melians in the Melian Dialogue: "... the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept"³⁰. The water treaties between India and Nepal are one-sided. It is true that Nepal did not have financial resources, it did not have technical expertise, nor did it have broader awareness about the rights and responsibilities of riparian states. International law is the basis, and ultimate arbiter, of relations among states. However, there are no indications that India and Nepal paid any regard to international law while dealing with each other on water resources. Even if Nepal lacked expertise, India should have treated Nepal on equal footing based on the provisions of international law. There are no indications that India had any regard for international law while dealing with Nepal on matters of water resources. It used its political power, economic strength, and technical expertise in getting the treaties concluded on its own terms. Thus, India-Nepal water treaties reflect the application of power politics, an offshoot of the theoretical tradition of Realism.

There are certain questions in India-Nepal water relations that Realism alone cannot explain. Realism presupposes statism, self help and survival. At the same time, it also focuses on the theory of balance of power. As Hans J. Morgenthau says, "small nations have always owed their independence either to the balance of power or to the preponderance of one protecting power, or their lack of attractiveness for imperialistic aspirations".³¹ With regard to buffer states like Nepal, Hans Morgenthau says, "the same factors are responsible for the existence of so-called buffer states....".³² Here, it needs to be mentioned that Morgenthau's theory of

³⁰ Thucydides, "The Melian Dialogue" in *The History of Peloponnesian War*, cited by Viotti, Paul R. and Mark V. Kauppi in *International Relations Theory, Realism, Pluralism, Globalism and Beyond* (Allyn and Bacon, 1999), p. 101.

³¹ Hans J. Morgenthau, *Politics Among Nations*, (Sixth Edition) (Singapore: McGraw Hill International Editions, 1997), p. 196.

³² *Ibid.*

balance of power is mainly guided by the theory of national security, i. e. how states endeavour to protect and maintain their independence and survival. While discussing Nepal-India water treaties, Realists' theory can be applied in respect of India. India used its power-both economic and political- to secure unequal treaties with Nepal. But, in Nepal's case, no examples are found as to what it did not to acquiesce to India's demands and designs. Nepal is well placed geographically to maintain a balance between China and India. Due to its geographical location and its historical and cultural realities, Nepal's relations and exchanges with India are deeper and more expanded than those with China. India seems to have benefited from this situation. However, there is no evidence to suggest that Nepal had tried to resist India's power pressure and not to conclude water treaties with India.

Under such a background, the water treaties between India and Nepal can be better explained under Dependency Theory. The original concept of Dependency Theory tried to explain the dependent relationship of the developing countries of the South on the developed countries of the North. This theory argues that the main reason for underdevelopment of the Third World countries is the exploitative relationship between the rich and the poor countries.³³ Though this theory tries to explain the exploitative relationship between the developed and the developing countries, it can be applied to the relationship between a powerful and a weak neighbouring states like India and Nepal.

Johan Galtung, in his famous essay "Structural Theory of Imperialism"³⁴, talks about five forms of imperialism: political, economic, military, informational and cultural. In fact, India's influence on Nepal can be seen in all these forms. In the earlier years, i. e. in the 1920s and 1950s, Nepal did not have any exposure to, and exchanges with, the outside world. Then, it did not have much connection with Tibet or China.³⁵ It was completely dependent on India for everything.

Ever since India and Nepal began their water relations, Nepal has always remained a weaker party. In the 1920s, Nepal lagged behind India in every respect. It was smaller in size and population; it was poor; its people were illiterate and ignorant; and it had no expertise either in terms of international water law or about its legitimate interests and requirements. For all practical purposes, it remained dependent on India. Moreover, as argued by Johan Galtung, the core of the Centre states and the core of the Periphery states have a harmony of interest. If applied to India-Nepal water relations, this theory means that India conspired with the elite class of Nepal to get the treaties concluded. A large section of Nepalese people still holds the view that certain political parties and/or leaders in Nepal "sold" Nepal's water resources out to India. This work, therefore, tries to explain the problem under the theoretical frameworks

³³ "Dependency Theory: An Introduction", an article by Vincent Ferraro (South Hadley: Mount Holyoke College, July 1996), p. 1.

³⁴ Johan Galtung: "A Structural Theory of Imperialism" in *Journal of Peace Research* (Oslo: International Peace Research Institute, 1971).

³⁵ Nepal had strong economic and political relations with Tibet after its unification by King Prithvi Narayan Shah. But, later, especially during the Rana rule (from 1846 to 1950 AD), Nepal's relations with countries other than India were very limited. Nepal established diplomatic relations with the People's Republic of China only in 1955.

of International Law, Power Politics of Realism and Dependency theories. These theoretical traditions and their relevance for this study are discussed in detail in chapter two of this thesis.

Research Methodology

The methodologies used for this research are document analysis, elite interviews, survey research and field visits.

This research has used and analysed the leading research studies done in the area of Nepalese water resources, water relations between India and Nepal, and water disputes between the two countries. The findings and conclusions have been presented and interpreted. Similarly, a number of research articles on the subject have also been studied, reviewed and interpreted. Document analysis has been very useful in finding out a number of facts and figures as well as in understanding how various authors and scholars have tried to explain the water relations between India and Nepal.

Elite interviews are one of the most important methodologies used in this study. In the absence of any concrete evidence about Nepal's compulsions behind concluding the unjustifiably unequal treaties with India, elite interviews have provided deep insight into the ground realities of the contemporary Nepal, the interests of the ruling elites and the economic and political imperatives that compelled Nepalese rulers to sign the agreements with India. Such elites include political leaders, historians, economists and scholars in the area of water resources.

The surveys, which are not very wide in their coverage, have been useful in reflecting the 'psyche' of Nepalese masses about India's attitude and behaviour towards Nepal and Nepal's water resources. It was interesting to find during surveys that there is an anti-Indian feeling among the Nepalese masses. And, one of the main reasons for such a negative feeling towards India is India's selfish attitude, interfering behaviour and a hidden design to extract undue advantage from Nepal's natural resources. It was also interesting to find out that the anti-India feeling among the Nepalese masses has also contributed to making Nepalese rulers more cautious about concluding any agreement with India.

Field visit to the important sites provided an opportunity to feel the problem, and also to realize the importance of the waters flowing through the mountains of Nepal in not only meeting the daily necessities of the peoples in India and Nepal but also in developing the two countries' economies by means of irrigation, hydro-electric power and navigation. The gracious boon of the nature has been turned into a curse for the peoples of the two countries, and into a subject of allegations and counter-allegations between the two governments. It was felt during the field visits that India had a long-term vision of utilizing the Nepalese waters for irrigating its northern plains and improving the living standards of the people living around the area. But, could not this legitimate consideration be accompanied by commensurate goodwill towards Nepal and an effort to utilize the international watercourses for equitable benefits for the people of both countries? Intention is said to be better than action. India, if it had better intentions, could have recognized and accepted Nepal's rights on the rivers and used its economic and political power in equally sharing the benefits accruing for the rivers. The field visit also demonstrated the mismanagement of some of the project sites and the high-handedness of Indian officials.

Organisation of the Study

This study has been divided into eight Chapters, including Introduction and Conclusion.

The second Chapter deals with Theoretical Framework. It discusses the frameworks that this study has applied as theoretical basis. Three theoretical frameworks have been applied: International Law, Power Politics of Realism and Dependency Theory. This Chapter discusses about international law as the basis for relations among states, and has given a brief account of international water law in the field of water resources, including those developed by the Institute of International Law, the International Law Association, and the International Law Commission. As will be discussed in the later chapter, international law alone cannot analyse India-Nepal water treaties and provide a complete framework for discussing water relations between the two countries. India used its power to get the treaties concluded with Nepal. Therefore, power politics under Realism can be another useful tool for analysing India-Nepal water relations. Besides, Nepal's weakness and lack of expertise, and its dependence on India compelled it to sign the treaties with its more powerful neighbor. This requires that the water treaties between India and Nepal be looked into under Dependency Theory. Therefore, this Chapter has taken International Law, Power Politics of Realism and Dependency Theory as theoretical frameworks for this research.

The third Chapter, Water Issues in South Asia, tries to look into water disputes in South Asia. In view of India's behaviour towards Nepal, it is interesting to see India's behaviour with other countries in the region. India has water disputes with Bangladesh and Pakistan. Water disputes between Bangladesh and India are of two types. One is on the Farakka Barrage, which was constructed by India in the 1970s, against the consent of Bangladesh. The other issue is about the proposed river linking project of India. India has been considering "linking" its eastern rivers to meet water demands of the places with water shortages, which has been seen in Bangladesh as a threat for its water supply. In the area of water relations between India and Pakistan, the 1960 Indus Water Treaty carries special significance. This Treaty has been successful in regulating water issue between India and Pakistan. However, there are a number of disputes between India and Pakistan on water relations. The neutral expert gave his opinion on the Baglihar Dam project. But, some other disputes like Wullar Barrage, Kishanganga, etc. are still continuing. The good thing about India-Pakistan water disputes is that both have sincerely agreed to solve water related problems under the Indus Water Treaty. Another positive aspect is that both India and Pakistan possess expertise on the subject, and there are very little chances of either country taking undue benefit from the other. At the same time, the traditional rivalry and competition between the two countries have made things rather sensitive, and both countries take extra care about issue with each other. India's behavior as an upper riparian vis-à-vis Bangladesh and Pakistan can give an insight into its general behavior with its neighbours in South Asia, and consider whether its policies and behavior have remained consistent or unilateral.

The fourth Chapter gives an overview of India-Nepal relations. The two countries have maintained relations since thousands of years, and have seen many ups and down. There were times in history, especially in the late eighteenth and early nineteenth centuries when India was divided and colonized by British rulers, and Nepal was a big, powerful and adventurous country. Nepal had captured a large part of the present day India, which was taken back after the Treaty of Sugauli of 1816. India-Nepal relations after 1816 and also after the

independence of India were very much dictated by the international developments in the two countries. Therefore, it is important to have a brief overview of India-Nepal relations, and see how it has impacted upon water relations between the two countries. This Chapter is an effort towards this end.

The next (fifth) Chapter, An Overview of India-Nepal Water Relations, deals with water relations between India and Nepal. It seems that Nepal did not have expertise on the area and, therefore, followed Indian advice. This kind of innocence or ignorance can be visible even during the late 1980s and early 90s, especially among the political leadership. This Chapter discusses Nepal-India water relations under three different timelines, i. e. the period before 1947, from 1947 to 1990, and after 1990. These divisions are appropriate in the sense that they are marked by different historical developments in India and Nepal. The period before 1947 is a period when India was under colonial rule, and Nepal was also under the family rule of the Ranas. India and Nepal did not have many projects on Nepal's water resources, and there were few issues. The period between 1947 and 1990 is period after India's independence but Nepal's experience of the active rule of the Kings. This period is very important as the most controversial water treaties (the Koshi and the Gandak Agreements) were concluded during this period. The period after 1990 marks the advent of democracy in Nepal. During the early periods, Nepal did not have expertise, awareness and financial resources to negotiate equal treaties with India. But, even after the advent of democracy in Nepal, no improvement has been visible. The Koshi Agreement of 1954 and the Gandak Agreement in 1959 carry very unequal provisions. So much so that even the 1991 understanding on Tanakpur Barrage tells similar story. Although democracy had been restored in the country; people were much more aware about the affairs of the country; and Nepal had achieved international exposure and expertise about international law and affairs, Nepal Government agreed to the understanding on Tanakpur Barrage. Here, the party politics of the Nepali Congress, which is said to be pro-India, seems more responsible. In this case, politics seems more responsible than ignorance and economic weaknesses. The Mahakali Treaty of 1996 ushered in a new era in the history of water relation between India and Nepal. The third part of the Treaty is based on equality, on the principle of equal investment and equal benefits. But India has been deliberately delaying the preparation of the Detailed Project Report, without which the Agreement cannot be implemented. This has raised questions about India's willingness to use water resources with Nepal on equal basis.

The following (sixth) Chapter tries to critically analyse the agreements signed between Nepal and India. It talks about the provisions of the major agreements between the two countries, and tries to analyse how far the treaties were one-sided. This chapter revisits the legal rights and obligations of states as regards water treaties, and compares India-Nepal water treaties from this perspective. At the same time, water treaties should also be considered from practical and utilitarian points of views as well as from the perspective of national sovereignty. Thus, this chapter tries to analyse Nepal-India water treaties from legal, practical, utilitarian and national sovereignty perspectives, and demonstrate how the treaties are unequal.

The seventh Chapter is an effort to find out why Nepal concluded the unequal treaties with India. There were political reasons that compelled Nepalese rulers to conclude the unequal treaties. Nepal was very much isolated from the international community. It was not only

India-locked politically; it was so economically as well. The domestic situation of Nepal was equally responsible for making then Nepalese rulers conclude such agreements with India. There were economic reasons as well. Nepal did not have enough capital to invest in the projects. Lacking the economic resources to invest in the construction of projects, Nepal seems content to have something without making any investments, with no serious regard for rights and obligations. Other factors that made Nepal sign the unequal water treaties with India include Nepal's lack of expertise and awareness about the importance of water resources as well as about international law, absence of informed population and civil society, minimal use of water resources including electricity and irrigation, and absence of an influential third party as in the case of Indus Water Treaty between India and Pakistan. India's high-handedness was no less responsible in compelling Nepal to sign the treaties. From the very beginning, India has been viewing Nepal as a country very much within its sphere of influence, referred to by a Nepali expert as "Indian version of Monroe Doctrine".³⁶ Going through books and articles from Indian authors, one feels that Indian establishment always viewed Nepal as a part of greater India, that they never expected Nepal to have its own and independent identity, and that Nepal should never go out of its "hands". This Chapter also gives a brief account of the developments relating to the Nile River with a view to see if the 'Nile syndrome' has any relevance in water relations between India and Nepal. Finally, these factors have been analysed under the theoretical frameworks of International Law, Power Politics and Dependency.

Finally, the Conclusion, which is the eighth Chapter, summarises the findings of the study. It also discusses how the findings can be generalized into a theory that is applicable to other countries and regions of the world. The main arguments are that asymmetric power relation between states can result in unequal treaties; the unequal nature of relationship can be exacerbated if the small partner is under-developed, politically undemocratic, and economically weak; and democracy, public awareness and vibrant civil society in a country can play a catalytic role in maintaining equal relations with other states. Besides, this Chapter also makes some recommendations on how the abundant water resources of Nepal can be developed to the satisfaction and mutual benefit of both countries.

The following Chapter, Theoretical Framework, gives the theoretical frameworks for this research, which include International Law, Power Politics of Realism, and Dependency Theory.

³⁶ Yadunath Khanal, *Essays in Nepal's Foreign Affairs* (Kathmandu: Murari Prasad Upadhyay, 1988).

CHAPTER TWO

THEORETICAL FRAMEWORK

Abstract

International law is the basis of relations among states. International law in the area of water resources has followed four broad approaches: absolute territorial sovereignty, absolute territorial integrity, restricted territorial sovereignty and integrity, and basin approach. The Institute of International Law, the International Law Association and the International Law Commission have all contributed to the development of international water law, and the UN Convention on the Non-navigational Use of International Water Courses is the most comprehensive convention so far. Power politics, which India used in getting water treaties signed with Nepal, is another tool that can explain India-Nepal water treaties. Nepal's dependence on India is no less responsible for making Nepal agree to the treaties. Therefore, International Law, Power Politics of Realism and Dependency Theory jointly provide the theoretical framework for explaining India-Nepal water treaties. A synthesis of these seemingly conflicting traditions is possible, appropriate and desirable. At the same time, Nepal's gradual realization of the importance of water resources, democracy, public awareness and vibrant civil society have contributed in making later treaties more balanced, suggesting the importance of Constructivism in India-Nepal water relations.

In the modern state system, international law is the ultimate basis of relations among sovereign states. The statute of the International Court of Justice has identified international conventions, international custom, general principles of law, and judicial decisions and the teachings of the most highly qualified publicists of the various nations as sources of international law.¹ Thus, treaties and agreements between sovereign states are naturally the parts of international law. The Vienna Convention on the Law of Treaties² provides that bilateral or multilateral treaties or agreements can be in any form.³ Therefore, all the agreements between India and Nepal on sharing or utilization of waters, irrespective of their forms, shall be considered as 'water treaties' between the two countries, and come, *ipso facto*, under the purview of international law. It needs to be mentioned here that the Vienna Convention on the Law of Treaties provides that treaties can be invalidated on the grounds of fraud, corruption of representatives, coercion of representatives, and coercion of state by the threat or use of force, or provisions conflicting with peremptory norm of general international law.⁴ As neither India nor Nepal has ever challenged the legality of the water treaties, nor has either party invoked any provision to revoke them, the treaties should be considered valid and binding upon both sides, and should be considered as parts of international law.

¹Article 38 of the Statute of the International Court of Justice.

² Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, United Nations Treaty Series, Vol. 1155, United Nations, 2005.

³ Article 1 (a) of the Vienna Convention on the Law of Treaties provides that "'treaty' means 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".

⁴ Articles 49 to 53 of the Vienna Convention on the Law of Treaties.

Irrespective of domestic or international situations, India-Nepal relations have remained a relationship of dominance and endurance. Even after the independence of India in 1947 and partial democracy in Nepal in 1951, the dominant relationship between the two countries continued. According to a scholar, Nepalese rulers never imagined that rulers of democratic and independent India would be more dominant on Nepal than their British rulers.⁵ Under such a background, international law alone cannot explain the water treaties between the two countries. We, therefore, need two more theoretical traditions of Realism and Dependency to explain the earlier water treaties between India and Nepal. At the same time, it has been noticed that later water treaties between India and Nepal are somehow different from the earlier treaties in terms of sharing of costs and benefits. The 1996-Mahakali Treaty, for example, is far better than the treaties on Koshi and Gandaki in the 1950s. Nepal's gradual experience in the area and realization of the importance of water resources, growing international exposure, increased public awareness in Nepal, etc. were the main reasons for the change. This change in approach by both countries can be better explained under the theory of Constructivism. In this way, International Law, Power Politics (Realism), Dependency Theory, and Constructivism can jointly provide the theoretical framework for studying water treaties between India and Nepal.

A. International Law

Though international water law is one of the oldest branches of international law, it is still in the formative stage. We find records of law of the seas of as early a period as that of the Phoenicians. These laws were so rational, effective and useful that they survived even after the defeat of the Phoenicians by Alexander the Great.⁶ The Act of the Congress of Vienna, adopted on 9 June 1815, was the first legal instrument to codify the principle of international law on navigational uses of international watercourses. The Congress of Berlin, in 1885, reconfirmed the freedom and priority of navigation established by the Act of the Congress of Vienna. The 1919 Peace Treaty of Versailles, which formally ended the 1st World War, further liberalized the freedom of navigation by all the navigable rivers in Europe for all the European countries. As international water courses were used only for navigation, it is understandable that traditional law on international watercourses related to navigational use only.

With the development of industrialisation, which contributed to developing other uses of rivers and seas and identifying other means of transport, the primacy of navigational use of international watercourses gradually receded. The Madrid Declaration of 1911 was the first international legal document to codify non-navigational use of international watercourses. This was followed by some other conventions and legal instruments. Such conventions are discussed in details in the following paragraphs.

⁵ Anand Aditya (ed.), *The Political Economy of Small States* (Kathmandu: NEFAS, 1998).

⁶ Bala Bahadur Kunwar, *A Brief Historical Perspective of Bilateral, Regional and Multilateral Treaties pertaining to the Navigation of International Waterways, and the Right of Land-locked Countries of Access to and from the Sea and Freedom of Transit*, a Thesis submitted to the Office for Ocean Affairs and the Law of the Sea as required under the Hamilton Shirley Amarsinghe Fellowship on Law of the Sea, 1986-87, p. 2. (A copy of the thesis is available with the author.)

As regards the non-navigational uses of international watercourses, there are four different, and in a way conflicting, approaches. The first is the *principle of absolute territorial sovereignty*, which is also known as the Harmon Doctrine.⁷ This principle holds that a country should have the right to use the waters in its territory in any manner it deems appropriate, without giving any consideration to the rights of other riparian states. This principle does not care about any harm to other riparian states. If accepted, this principle also means that a lower riparian state has no right to demand unrestricted flow of waters from upper riparian states. The second principle, *the principle of absolute territorial integrity*, tries to establish the rights of a lower riparian state to demand unrestricted flow of an international river into its territory and also an obligation of an upper riparian state to maintain such flow into lower riparian state. This principle maintains a minimal use of waters by riparian states, as they have to maintain the natural flow of water into lower riparians. The third principle is a combination of the first and the second principles. It can be called *the principles of restricted territorial sovereignty and restricted territorial integrity*. This principle “restricts both principles (of absolute territorial sovereignty and absolute territorial integrity) by asserting that every riparian state has a right to use the waters of international river, but is under a corresponding duty to ensure that such use does not significantly harm other riparian”.⁸

The fourth principle treats the *whole basin of a river as an economic unit*. All the co-riparian states form a community, and have rights over the river established by agreements or distributed proportionately without any regard for geographical boundary. This principle looks for an optimal and integrated development of the entire basin. As can be seen, this principle seems more idealistic and difficult to implement, especially in view of the sense of nationalism and other selfish aspirations among states.

The Institute of International Law, the International Law Association and the International Law Commission are the principal institutions that have been contributing to the development of international law. These institutions have broadly upheld the principle of limited territorial sovereignty and limited territorial integrity. A brief account of their contributions is given below.

The Institute of International Law

The Institute of International Law was the first institute to attempt codification of international law. It adopted the Madrid Declaration in 1911⁹, which rejects the principle of

⁷ This principle is called the Harmon Doctrine based on the opinion of US Attorney General, Mr. Judson Harmon, who said in 1895, with reference to a dispute with Mexico, that there was no recognised right "by which it could be held that the diversion of the waters of an international boundary stream for the purpose of irrigating lands on one side of the boundary and which would have the effect to deprive lands on the other side of the boundary of water for irrigation purpose would be a violation of any established principle of international law". See for further details Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective*, Washington D. C.: The World Bank, 2002, pp. 11-12.

⁸ *ibid.*, p. 14.

⁹ International Regulations Regarding the Use of International Watercourses for Purposes other than Navigation, Madrid, 20 April 2011.

absolute territorial sovereignty, and propagates the principle of no harm to other riparians. The Declaration requires riparian states to utilise water in such a way that it does not interfere with the utilisation by other states and obligates them not to make alterations which are likely to cause harm to other riparian states. Thus, the Madrid Declaration upholds the principle that states are entitled to use watercourses in their territory but without causing any 'appreciable harm' to other states.

Another contribution of the Institute of International Law is the Salzburg Resolution, adopted in Salzburg in 1961.¹⁰ This Resolution is considered another landmark in the development of international water law. It advocates that "maximum utilization of available natural resources is a matter of common interest",¹¹ and confirms the traditional obligation of states not to cause unlawful harm to other riparians. Another important aspect of this Resolution is its acceptance of 'equity' and 'needs' of riparian states. The Resolution also requires prior notification for works on international watercourses that may affect the possibility of utilisation by other parties. The Institute of International Law has also adopted other resolutions which include the Athens Resolution of 1979 and three Resolutions adopted in Salzburg in 1997. As these Resolutions deal with environmental pollution, they are excluded from the scope of this study.

The International Law Association

In sharp contrast to the principles of the Institute of International Law, the International Law Association has propagated the principle of equitable and reasonable utilization of international watercourses. The Association issued its first set of principles in 1956, titled "A Statement of Principles upon which to base Rules of Law Concerning the Uses of International Rivers", also known as the Dubrovnik Statement.¹² The Statement accepts that states have sovereign control over the rivers in their territory, but requires the states to exercise such control with due consideration for the effects of such control on other riparian states. The Statement also lays down foundation for the principle of equitable and reasonable utilization of international watercourses. Through the Dubrovnik Statement, the International Law Association "not only rejected the principle of absolute territorial sovereignty, but also carried the principle of limited territorial sovereignty to its logical end by adopting the principle of equitable utilization".¹³ Though the Dubrovnik Statement does not clearly mention the term 'equitable and reasonable utilization', it was clearly stipulated in the New York Declaration of 1958, which states that "each co-riparian state is entitled to a reasonable and equitable share in the beneficial usage of the waters of the drainage basin."¹⁴ The Tokyo

¹⁰ Resolution on the Utilisation of Non-Maritime International Waters (Except for Navigation) adopted by the Institute of International Law at its session held at Salzburg on 11 September 1961.

¹¹ Preamble to the Resolution.

¹² It should be mentioned here that the Committee on the Uses of the Waters of International Rivers, which was established by the International Law Association in 1954, intended only to lay down principles on which rules of law could be formulated and not to state rules of law.

¹³ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers*, p. 20.

¹⁴ Article 2 of the Report of the Forty-eighth Conference of the International Law Association, New York, 1958.

conference of the International Law Association, held in 1964, further reiterated this principle.

One of the major achievements of the International law Association is the adoption of Helsinki Rules in 1966, which further elaborated the principles already accepted in earlier resolutions. The Rules define international drainage basin as “a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus”¹⁵, and “have established ‘reasonable and equitable utilization’ of the waters of such basins among the riparian states as the guiding principle of international water law”.¹⁶ Thus, the major contribution of the Helsinki Rules (or that of International Law Association), is the emphasis on equitable and reasonable utilization of waters of international drainage basin, which may be compared with the no-harm principle developed by Madrid Declaration and Salzburg Resolution. The Rules have remained the basis for further activities and principles of the International Law Association. For example, the 1972 Articles on Flood Control¹⁷, the 1976 Rules on Administration of International Watercourses¹⁸, the 1980 sets of rules¹⁹, the 1982 Articles on water pollution in an international drainage basin²⁰ as well as the 1986 complementary rules²¹ were all subjected to the supremacy of the principles developed by the Rules, or based on the principle of equitable utilization.

The International Law Commission

The United Nations is one of the most important sources of international law. It has been playing a very important role in the codification and development of international law, including the international watercourses law, through its legal arm, the International Law Commission.²² Even the predecessor of the United Nations, the League of Nations,

¹⁵ Article 1 of the Report of the Fifty-second Conference of the International Law Association, Helsinki, 1966.

¹⁶ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers*, p. 22.

¹⁷ International Law Association, Report of the Fifty-fifth Conference, New York, 1972.

¹⁸ International Law Association, Report of the Fifty-seventh Conference, Madrid, 1976.

¹⁹ The Conference of ILA, held in Belgrade in 1980, adopted two sets of rules: one dealing with the regulation of the flow of the water of the international watercourses, and the other dealing with the relationship of international water resources to other natural resources' environmental elements. See, for details, International Law Association, Report of the Fifty-ninth Conference, Belgrade, 1980, pp. 362-375.

²⁰ International Law Association, Report of the Sixtieth Conference, Montreal, 1982.

²¹ The Seoul Conference of 1986 adopted the Complementary Rules Applicable to International Water Resources, which tried to further clarify certain elements of the Helsinki Rules. The Complimentary Rules dealt with three issues, each dealing with substantial injury to co-basin states, installation of works or the use of water in the territory of co-basin states, and notification procedure. These Rules also tried to clarify matters regarding groundwater. See, for details, International Law Association, Report of the Sixty-second Conference, Seoul, 1986, pp 238-303.

²² The International Law Commission was established in 1947, through a Resolution of the UN General Assembly, in accordance with Article 13 of the UN Charter. Article 13 of the UN Charter stipulates that the General Assembly shall initiate studies and make recommendations for the purpose of “encouraging the progressive development of international law and its codification” (Charter of the United Nations at www.un.org). The Commission consisted of 34 members acting on their individual capacity, and not as representatives of their countries.

contributed towards this end through two important instruments: the Barcelona Convention of 1921²³ and the Geneva Convention of 1923²⁴. The Barcelona Convention, while confirming the freedom of navigation, recognised the right of member states to close the waterways in exceptional circumstances if navigation was of little importance to it and also if the state could justify its action on the ground of economic interest greater than navigation.²⁵ The Geneva Convention, on the other hand, basically deals with the development of hydraulic power, and puts some limitations to the rights of states to use waters in their territories. According to this Convention, states can carry out operations for such development "to the limits of international law".²⁶ It also requires negotiations among states and conclusion of agreements in cases where development of hydraulic power involves the territory of two or more states.

The Convention on the Law of the Non-Navigational Uses of International Watercourses is the most important legal instrument so far codified by the United Nations in the area of international watercourse law. The UN General Assembly, through its Resolution No. 2669 (XXV) of 8 December 1970, recommended to the International Law Commission to initiate works on a convention on international watercourses. After a hard work of about two decades and a half, the International Law Commission adopted the draft of the Convention on the Law of the Non-Navigational Uses of International Watercourses in 1994, and submitted it to the General Assembly. The Convention was adopted by the UN General Assembly on 21 May 1997.

The UN Convention has defined watercourse as "a system of surface waters and ground-waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus"²⁷, and international watercourse as "a watercourse, parts of which are situated in different states".²⁸ Part II of the Convention deals with equitable and reasonable utilization of watercourses, and sets forth factors relevant to such utilisation. This part also deals with members' obligation not to cause significant harm to other riparians as well as with general obligation to cooperate. Part III of the Convention stipulates procedure to be applied while planning measures on international watercourses, which are likely to cause adverse effects to other riparian states. Part IV stipulates guidelines for protection, preservation and management of the watercourses whereas Part V stipulates provisions to deal with harmful conditions and emergency situation. Part VI deals with miscellaneous provisions, including protection at the time of armed conflict, non-discrimination, procedure for dispute settlement, etc. Part VII, the Final Clauses, deals with procedural matters such as signature, ratification, entry into force, etc. The Annex stipulates the arbitration procedure

²³ The Convention on the Regime of Navigable Waterways of International Concern of 1921.

²⁴ General Convention Relating to the Development of Hydraulic Power Affecting More than One State, signed in Geneva on 9 December 1923 (36 UN Treaty Series, 75).

²⁵ Convention and Statute on the Regime of Navigable Waterways of International Concern (Barcelona Convention), signed in Barcelona under the aegis of the League of Nations on 20 April 1921, Article 10 (1), United Nations Treaty Series 35.

²⁶ Article 1 of Geneva Convention.

²⁷ Article 2 (a) of the UN Convention.

²⁸ Article 2 (b) of the UN Convention.

pursuant to Article 33 of the Convention. Article 35 (2) of the Convention has allowed regional economic integration organizations to become parties to the Convention.

As the preamble of the Convention states, such a convention is expected to assist in “promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations”²⁹. The Convention is a framework convention, aimed at ensuring “the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilisation thereof for present and future generations”.³⁰ Given the competing interests of the upper and lower riparian states, the decision to opt for a framework convention seems quite realistic. As Salman M. A. Salman and Kishor Upreti say, “any other attempt would have been futile, and would have likely been a failure”.³¹ As a framework convention, the Convention has provided guidelines for watercourse agreements between and among states. Again, reflecting the different interests of member states, the Convention has adopted both no-harm rule and the principle of equitable and reasonable utilization.

The UN Convention was sponsored by 38 Countries. During voting in the General Assembly, one hundred three countries voted for it, three (China, Rwanda and Turkey) voted against it, twenty-seven abstained from voting, and thirty-three remained absent. According to a study, most of the countries that abstained from voting were upper riparian developing countries, indicating that the Convention was biased in favour of lower riparian states.³² Many countries criticized articles 5, 6 and 7, which deal, respectively, with equitable and reasonable utilization and participation, factors relevant to equitable utilization, and obligation not to cause significant harm. Considering the voting patterns and views expressed by states, it can be reasonably said that states were particularly guided by their national interests. India objected to the arrangements regarding regional economic integration organization while Pakistan criticized the inclusion of ground waters in the definition of watercourse. China openly expressed views in favour of sovereign rights of states, implying its support for the principle of absolute territorial sovereignty.³³

Whatever the weaknesses and criticisms of the Convention, it will prove to carry significant values in the development of international water law. First, it was based on the draft of the International Law Commission, which is responsible for codification and development of international law. The provisions about equitable utilization, no harm, prior notification, etc.

²⁹ Articles 1 and 2 of the Charter of the United Nations deal with the purposes and principles of the United Nations, respectively.

³⁰ Preamble of the UN Convention.

³¹ Salman M. A. Salman and Kishor Upreti, *Conflict and Cooperation on South Asia's International Rivers*, p. 27.

³² For details, see Aaron Schwabach, “The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, Customary International Law, and the Interests of Developing Upper Riparians” in *Texas International Law Journal* (Spring 1998, 33, 2; Research Library) pp. 260-264.

³³ China’s representative to the UN said, that “territorial sovereignty is a basic principle of international law. A watercourse state enjoys indisputable territorial sovereignty over those parts of international watercourses that flow through its territory”. See, General Assembly transcript

are “codification of existing norms”³⁴. Similarly, the norms set forth by the Convention are likely to be developed over time into state obligations. Second, it was debated and adopted in the UN General Assembly, which is the most widely represented body in the world. Thus, the conventions adopted by the UN General Assembly virtually have global legitimacy. Even if it does not come into force, it may provide guidelines for future discussions and arbitrations. Third, even before the Convention was adopted, its draft articles had influenced the drafting of specific agreements. It is likely that states negotiating agreements in the future will be guided by, and refer to, its provisions.³⁵

As has been stated before, India-Nepal water treaties should have regard for, and been based on, the prevailing provisions of international law. However, as will be discussed in details in the later chapters, the treaties seem to ignore international law, and concluded on the basis of a party's one-sided interest, a good example of power-politics.

B. Power-politics of Realism

The relationship between India and Nepal suggests the modern version of what the Athenians said to the Melians in the *Melian Dialogue*: “... in fact the strong do what they have the power to do and the weak accept what they have to accept”³⁶, implying the practical application of the theory of Realism. Before applying this theory to explain India-Nepal water treaties, it would be appropriate and necessary to discuss Realism in some greater details.

Realism is one of the most influential theoretical traditions in the discourse on international relations. It presupposes statism, self-help and survival, and considers power as the ultimate and most effective tool for achieving a country's national objectives. According to the theory of Realism, states always endeavour to maximize power, make alliances in their favour, and try to break or weaken alliances against them. The roots of Realism can be traced back to the accounts and writings of Thucydides,³⁷ Kautilya, Machiavelli and Thomas Hobbes. In modern times, this tradition is further elaborated and developed by E. H. Carr, Hans Morgenthau, Kenneth Waltz, John J. Mearsheimer, among others. A brief account of their contributions to the development of Realism is given in the following paragraphs.

E. H. Carr (1892-1982): Edward Hallett Carr (E. H. Carr) was a British historian, diplomat, journalist and theorist, and a great critic of Liberalism. His *Twenty Years' Crisis*³⁸ is a devastating criticism of Liberalism. He criticized Liberals as those living in the world of imagination and not in the world of facts and reality. He thought that power is the central element in world politics, that pursuit of power is a natural right of states, and that balance of

³⁴ Stephen C McCaffrey and Mpazi Sinjela, *The American Journal of International Law* (Washington: January 1998. Vol. 92, Issue 1).

³⁵ *Ibid.*

³⁶ Thucydides, “The Melian Dialogue” in *The History of Peloponnesian War*, cited by Viotti, Paul R. and Mark V. Kauppi in *International Relations Theory, Realism, Pluralism, Globalism and Beyond* (Allyn and Bacon, 1999), p. 101.

³⁷ Thucydides was a Greek historian, whose account of the Peloponnesian War between Athens and Sparta from 431 to 405 BC, and in particular the Melian dialogue, is still referred to and often quoted.

³⁸ E. H. Carr, *The Twenty Years' Crisis, 1919–1939*, New York: Perennial, 2001.

power is the law of nature and panacea to all political problems. As against Liberals' belief in the harmony of interest, he believed that international relations must make distinction between values and facts. He said that the slogan of the "harmony of interest" is an attempt on the part of great powers for maintaining status quo, and that it is "a cloak for the vested interest of the privileged".³⁹ He felt that the so-called universal principles such as peace, harmony of interest, collective security and free trade were not principles at all but reflection of national interests of the powerful states. He also opposed the concept of Laissez Faire as favorable and appropriate for developed and industrialised countries like the Great Britain because developing countries needed protectionism to protect their industries. He thought that clashes of interest among states were inevitable and that balance of power could minimize such clashes. Carr believed in three fundamental principles: i) history is a sequence of cause and effects; ii) theory does not create practice; practice creates theory; and iii) ethics and morality are the products of politics and power. It must also be mentioned here that Carr, as a historian, understood the limitations of Realism. He thought that Realism alone is not enough because it does not provide spirit for action and lacks motivation for change. He believed that Realism excludes finite goal, emotional appeal, right of moral judgment, and ground for change.

Hans J. Morgenthau (1904-1980): Hans J. Morgenthau is considered the pioneer of Realism. Taking the challenging from Carr, he tried to create a science of international politics by applying positivists' approach to political science. In his writings, we find ample references to science, laws, principles and objectivity. Thus, he made a great contribution to systematized IR theory, especially against Idealists. Morgenthau's understanding of world politics take two approaches. The first "believes that a rational and moral political order, derived from universally valid abstract principles, can be achieved by conscious political action".⁴⁰ The second holds a view that "the world's imperfections are 'the result of forces inherent in human nature'....and to improve the world, one must work with those forces, not against them".⁴¹ Morgenthau proposed six fundamental principles of political realism:⁴²

- i. Politics is governed by objective laws that have their roots in human nature. Men will challenge them at the cost of their own failure.
- ii. International politics can be best understood by the concept of *interest* defined in terms of *power*. Every state pursues its own interests, and wants to maximize power. There is no escape from power politics.
- iii. Form and nature of states may vary in time, place and context but the concept of interest does not change.
- iv. Universal moral principles cannot be applied to the actions of states but state behavior can have moral and ethical implications.

³⁹ Scott Burchill, "Realism and Neorealism" in Scott Burchill and Andrew Linklater, *Theories of International Relations* (New York: St. Martin Press, 1996), p. 69.

⁴⁰ *Ibid*, p. 74.

⁴¹ *Ibid*.

⁴² For details, please see Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: McGraw Hill International Editions, 1997), pp. 4-14.

- v. There are no universally accepted moral principles in international politics. They are designs to institutionalize a state's hegemony around the world.
- vi. International politics has an autonomous sphere, and the difference with other thoughts is real. It is all about the struggle for power ("war of all against all").

Morgenthau systematized international politics for the first time. He tried to build diplomatic relations in a natural scientific footing, i. e. that diplomatic relations have laws as other disciplines. About the balance of power, he says, "small nations have always owed their independence either to the balance of power or to the preponderance of one protecting power, or their lack of attractiveness for imperialistic aspirations".⁴³ Mr. Morgenthau also considers that "the same factors are responsible for the existence of so-called buffer states....".⁴⁴

Kenneth Waltz (1924-2013): Kenneth Waltz is the pioneer of Neo-realism, also known as Structural Realism. Waltz developed this theory with two main objectives: respond to Dependency Theory and to correct traditional Realism's neglect of other forces such as economy in international politics. Waltz made a distinction between a theory and facts, and believed that international politics has a "domain apart", and, therefore, can be studied as a system of precisely defined structure. He believed that 'theory is artifice'; therefore, the process of theorizing is possible only "if various objects and processes, movements and events, acts and interactions, are viewed as forming a domain that can be studied in its own right".⁴⁵

Traditional Realism took actor-centric approach, and argued that character and behavior of units are the causes of political events. Neo-realism tries to explain international politics in terms of structure and units, in which structure or the global system decides the behavior of units or states. Waltz argues that the international system has three properly defined characteristics: i) the ordering principle, ii) character of units, and iii) distribution of capabilities. His argument is that the nature of international system is anarchic, that units are functionally similar and, therefore, show similar pattern of behavior, and that the units vary in terms of their capabilities.

Whatever its popularity Waltz's Neo-realism also is not free from criticism. Scholars such as John Ruggie and Andrew Linklater, among others, have criticized this theory. Mr. Ruggie, who is considered as one of the major contributors to constructivism, criticized Waltz for neglecting the roles of ideas, identities and norms. Mr. Linklater criticized Neo-realism saying that it "cannot envisage a form of statecraft which transcends the calculus of power and conflict".⁴⁶ Coax termed Neo-realism as 'a problem-solving theory'. Others have argued

⁴³ *ibid*, p. 196.

⁴⁴ Scott Burchill, "Realism and Neorealism" in Scott Burchill and Andrew Linklater, *Theories of International Relations*, p. 69.

⁴⁵ Kenneth Waltz, 'Realist Thought and Neo-Realist Theory' in *Journal of International Affairs*, vol. 44, No. 1, (1990) p.33; quoted by Scott Burchill, "Realism and Neorealism" in Scott Burchill and Andrew Linklater, *Theories of International Relations* (New York: St. Martin Press, 1996), p. 84.

⁴⁶ Quoted by Scott Burchill in *Theories of International Relations* p. 89.

that Waltz's Neo-realism is a theory with 'too many holes and emissions', that it leaves no room for change by actors, that it denies interdependence among states, and that it does not take into account the debate between 'trading state' vs. 'military state'.

John J. Mearsheimer (1947): John J. Mearsheimer is a realist thinker who has made his mark as the pro-pounder of Offensive Realism. He builds on and tries to improve Kenneth Waltz's structural realism (Neo-realism), and has made considerable contribution to develop it. He relies on the five basic assumptions of structural realism: 1) that the nature of international politics is anarchic; ii) that survival is the primary motivation of states; iii) that states possess some military capabilities to hurt or destroy each other; iv) that states cannot be sure of other states' intentions; and v) states are rational entities. However, he differs with traditional neo-realists in the basic principle of state behavior. As against the belief of neo-realists that states endeavor to maximize their security (a defensive approach), Mearsheimer argues that states try to maximize their power (an offensive approach). He says, "they (states) look for opportunities to alter the balance of power by acquiring additional increments of power at the expense of potential rivals".⁴⁷ He has classified state power into two categories: actual (military) power and latent (economy and population) power. He holds the view that states try to maximize their power to the point of hegemony that can result from a situation of 'unbalanced multipolarity'. He has recognized geographical location and population as other determinants of power, and concludes that global hegemony is almost impossible. Under such a situation, states take two approaches to maximize their power. First, they try to maximize their relative power and second, they try to lessen and check the gains for the aggressor. To achieve their objectives, states form alliances and take other policies like blackmailing and buck-passing. However, Mearsheimer concedes that none of these tactics is free from risks. Mearsheimer differs from Waltzian neo-realism also in that he believes in states' relentless competition for power, recognises unit-level actors also and blurs the distinction between international politics and a country's foreign policy.

The critics of Offensive Realism blame him of ignoring other forms of power-struggle such as economic warfare, failing to explain why states strive for achieving soft power, and unrealistically highlighting states' quest for territorial expansion in the modern times. Peter Toft says that Mearsheimer's theory has four logical flaws⁴⁸: it does not flow logically from the assumptions; Mearsheimer's thinking suffers from problem relating to rationality assumption; there is an ambiguity regarding level of analysis; and it lacks clarity as regards the importance of the two key variables (power and location). He terms Mearsheimer as "one of the most controversial and influential contributors to the contemporary realist tradition" and thinks that "Mearsheimer's work is likely to rank among the most important advances in modern realism".⁴⁹

⁴⁷ John J. Mearsheimer, *The Tragedy of Great Power Politics*, New York: W. W. Norton and Company, Inc., 2001, p. 34.

⁴⁸ Peter Toft, *John J. Mearsheimer: An Offensive Realist Between Geopolitics and Power*, Department of Political Science, University of Copenhagen, Osterfarimagsgade 5, DK 1019, Copenhagen (email: pt@ifs.ku.dk).

⁴⁹ *Ibid*, pp. 2 and 26.

The theory of Realism can be applied in respect of India-Nepal relations. However, the traditional theory of Realism, *per se*, cannot fully explain Indo-Nepal relations in general, and water treaties between them, in particular. From Realist perspective, the theory of Power Politics can be a better tool to explain these relations. Therefore, the concept of Power Politics needs to be considered here in greater details

Power Politics

The term 'power' is found to have been used with two different meanings: some using the term interchangeably with *state*,⁵⁰ and others using it to mean strength. This is the second meaning of the term 'power politics' that is applicable to the relationship between India and Nepal. As Martin Wight says, power politics is "bound to be associated with the so-called realist school of writing about international politics, (which is) a necessary or inherent feature of all relationships among sovereign states".⁵¹ It is the "series of efforts, by one power after another, to gain mastery of the state-system"⁵², and came into existence with the beginning of modern state system after 1648.

Martin Wight has classified states into three categories: world or great powers, middle or regional powers and small or minor powers. According to him, a dominant or great power is one whose strength can be measured against all its rivals combined; middle powers are the states which have lost the status of great power; and regional powers are those which have general interests relative to the limited region and a capacity to act alone, which gives them the appearance of local great power. Minor powers have the capabilities of defending their limited interests only, have territorial disputes with their neighbours, their livelihood depends on small phenomena like fisheries, have to sell their raw materials, and their foreign policy is so limited that their main foreign policy objective is preservation of their independence.⁵³ The number of the powers in each category increases or decreases from time to time.

Power of a state comprises many elements such as geographical size, size of population, strategic location, economic resources, industrial production, administrative and financial efficiency, education and technological skills, and moral cohesion. Against the focus of scholars on morality, political maturity, peace, etc., which are normally classified as soft power, scholars like Martin Wight have argued that such phrases do not carry real meaning in international politics. Such phrases, Wight argues, "are more likely to carry weight within their own frontiers than beyond", and that "just as in domestic politics influence is not government, so in international politics influence is not power. It is concrete power in the end that settles great international issues".⁵⁴

⁵⁰ Martin Wight is one of them. He, for example, says, "we have the independent units, which we call states, nations, countries, or *powers*, and we have a highly organized system of continuous relationship between them, political and economic, diplomacy and commerce, now peace, now war". See Martin Wight, *Power Politics* (Continuum International Publishing Group, 2002), p. 23.

⁵¹ *Ibid.* p. 17.

⁵² *ibid.*, p. 30.

⁵³ For detailed description about Martin Wight's classification and description of powers, see *ibid.*, pp. 41-67.

⁵⁴ *ibid.*, pp. 43-44.

States use all forms of power vis-a-vis other states to achieve their national objectives. While using elements of power at their disposal, the traditional game theory comes into play. Outcomes of game may result in different situations: win-win situation, win-lose situation, lose-lose situation. As far as possible, states try to achieve their national objectives with a win-win situation, that the outcome could be beneficial to both countries. However, there are very few occasions in world politics in which interests of two or more countries converge and coincide, and their dealings result in a win-win situation. Gradually, the powerful states use other, and harsher, elements against weaker countries to get their objectives. Such methods may include threats, sanctions, covert or overt interference in internal affairs, and, if necessary, military intervention. Military intervention is the highest form of the use of force, and may have long-term implications. States use military intervention as a tool of last resort, as it is not an easy or preferable option due to various reasons.

C. Dependency

India no doubt played power-politics to get the unequal water treaties signed by Nepal, but Nepal is no less responsible in this process. Hence, India-Nepal water relations can be better explained under Dependency Theory. Let us, therefore, first look into Dependency Theory before considering how it can explain Nepal's position vis-à-vis India.

Dependency Theory, which developed as a theory of international relations in the 1950s and got prominence in the 1960s and 70s,⁵⁵ basically argues that the main reason for the underdevelopment of the poor countries in the South is their exploitative relationship with the countries in the North. In essence, Dependency Theory is a theory of Third World development. However, it is equally valid in case of the relationship between a powerful developing country and a weaker one, such as India and Nepal.

Defining Dependency

Different thinkers have tried to define *dependency* in different ways. Theotonio Dos Santos has defined it as "a situation in which the economy of certain group of countries is conditioned by the development and expansion of another economy, to which their own is subjected".⁵⁶ Osvaldo Sunkel has defined it as "an explanation of the economic development of a state in terms of the external influences- political, economic, and cultural- on national development policies".⁵⁷ Similarly, Vincent Ferraro says, "dependency theory attempts to explain the present underdeveloped state of many nations in the world by examining the patterns of interactions among nations and by arguing that inequality among nations is an intrinsic part of those interactions".⁵⁸ Andre Gunder Frank, the Marxist proponent of dependency theory, sounds more revolutionary when he says, "....historical research demonstrates that contemporary underdevelopment is in large part the historical product of

⁵⁵ Vincent Ferraro "Dependency Theory: An Introduction" (an article) (South Hadley: Mount Holyoke College, July 1996), p. 1.

⁵⁶ Theotonio Dos Santos, "The Structure of Dependence", in K. T. Fann and Donald C. Hodges (eds.), *Readings in US Imperialism* (Boston: Porter Sargent, 1971), p. 226, as cited by Vincent Ferraro.

⁵⁷ Osvaldo Sunkel, "National Development Policy and External Dependence in Latin America", *The Journal of Development Studies*, Vol. 6, no. 1, October 1969, p. 23, as cited by Vincent Ferraro.

⁵⁸ Vincent Ferraro, "Dependency Theory: An Introduction" (an article) (South Hadley: Mount Holyoke College, July 1996), p. 1

past and continuing economic and other relations between the satellite underdeveloped and the now developed metropolitan countries".⁵⁹

Dependency theory believes that both internal and external forces are responsible for underdevelopment of the poor countries. The internal actors act under influence and dictates of the foreign forces. Such internal forces are also called the "comprador" or "bourgeoisie" class, and assist external forces in exploiting its citizens. The international political economy is responsible for creating a situation of domination and dependence in which developing countries are made mere producers of raw materials and repositories of cheap labour. This theory also believes that only trade and markets cannot eradicate poverty among the third World countries and that economic indices such as GDP, GNP, growth rates, exports, etc. should be replaced by social indicators such as life expectancy, literacy, education, infant mortality, etc, as they cannot truly reflect the level of development.

There is a debate even among the proponents of Dependency Theory. There are liberal reformers like Raul Prebisch and Marxist theorists broadly represented by Andre Gunder Frank. And, there are world-system theorists like Immanuel Wallerstein. The debate seems serious, and understanding and definition of dependency vary. However, all of them share three broad common features:

1. that the international system is characterized by two sets of states: dominant and dependent, also known as centre and periphery, or metropolitan and satellite. The first category comprises the developed world and the secondary category the developing world;
2. that external forces play decisive role in the economic activities in the developing countries. Such forces include multinational corporations, INGOs, foreign assistance, commodity markets, and other means that can represent the advanced countries; and
3. that the dependent relationship between the core and the periphery states is a dynamic and an ongoing process, and the interactions between them not only reinforce but also intensify the unequal patterns.

Development of Dependency Theory

Dependency Theory belongs to Globalism school of thought. There have been a number of thinkers and researchers who have contributed to the development of the theory of Globalism. Following is a brief summary of the contribution made by them.

Karl Marx (1818-1883): Karl Marx was the founder of Globalism, or Dependency Theory for that matter, though he did not mention it by this name. Marx said that the history of the world was the history of class struggle- struggle between capitalist and proletariat classes. Marx believed that i) a few (capitalists) exploited many (proletariats), and the North exploited the South; ii) capitalism contained some law-like qualities in terms of its development and expansion, and, therefore, the contradictions and tensions in the economic systems can be

⁵⁹ , "The Development of Underdevelopment," in James D. Cockcroft, Andre Gunder Frank, and Dale Johnson (eds.), *Dependence and Underdevelopment* (Garden City, New York: Anchor Books, 1972), p. 3.

resolved only through a transformation into a socialist mode of production; and iii) the society must be studied in its totality, not on piece-meal basis. Thus, Marx influenced Globalists in terms of "emphasis on exploitation, discernible historic patterns of capitalist development and expansion, and the importance of understanding the 'big picture' and then asking how individual parts fit into the whole".⁶⁰

John A. Hobson (1858-1940): John A. Hobson was "a consistent opponent imperialism and advocate of an active social policy which would make Liberalism attractive to the working class".⁶¹ He said that capitalist societies faced three basic interrelated problems: over-production, under-consumption by working class, and over-saving by capitalist class. The saving, resulted from over-production due to economies of scale and under-consumption due to lower wages and income of the working class, needed to be invested in the Third World countries, in search of expanded markets and raw materials. "In order to take advantage of these opportunities, the upper classes increasingly adopted a policy of putting pressure on the government by stirring up popular jingoism, so that political, diplomatic, and if necessary military force might be used to acquire new overseas territories and open them up to capital investors, especially those of one's own nation".⁶² This process, Hobson said, expands the chain of imperialism. Imperialism benefits only a small group of capitalists. Hobson also believed that imperialism, which results in competition among imperialists for colonies, was also the major cause of war.

Lenin (1827-1924): Vladimir I. Lenin developed the theory of imperialism into a new height—a political height through his famous work, *Imperialism: The Highest stage of Capitalism*. In this work, Lenin drew heavily from Hobson and a German Social Democrat Rudolph Hilferding. From Hobson, Lenin drew the conclusion that over-production and under-consumption resulted in imperialism and colonialism; and, from Hilferding, he borrowed the idea that imperial policies showed the highest form of capitalism with monopoly and financial capital. As a revolutionary, Lenin believed that reformation was impossible within imperialism (Hobson believed it was possible).

Rosa Luxembourg (1870-1919): Rosa Luxembourg expressed a deep commitment to revolution. She was strongly against reformism as, she believed, it was a compromise with bourgeoisie which strengthened the hands of capitalist class. "Only a *hammer-blow* of revolution", she said, "that is to say the conquest of political power by the proletariat, can breakdown this wall of opposition posed by the capitalist to socialist society".⁶³ She was brave enough to challenge Lenin for supporting association with bourgeoisie during revolution. She demonstrated that a true Marxist is never a nationalist. Lenin favoured two stages of revolution: one for socialism, and the other for communism. Luxembourg said that

⁶⁰ Paul R. Viotti and Mark V. Kauppi in *International Relations Theory, Realism, Pluralism, Globalism and Beyond*, Allyn and Bacon, 1999, p. 344

⁶¹ Wolfgang J. Mommsen, *Theories of Imperialism* (translated by P. S. Falla), (London: Weidenfeld and Nicolson, 1980), p. 11.

⁶² *Ibid*, p. 13.

⁶³ Paul R. Viotti and Mark V. Kauppi in *International Relations Theory, Realism, Pluralism, Globalism and Beyond*, Allyn and Bacon, 1999, p. 347

both the capitalists and bourgeoisie should be dealt with together. She blamed Lenin as a reformist, which could lead to the fall of Soviet socialist revolution, and ultimately to the disintegration of the Soviet Union.

Johan Galtung: Johan Galtung, the Norwegian socialist economist, goes one step further in discussing imperialism. In his famous work, *A Structural Theory of Imperialism*, he defines imperialism as "one way in which the Centre nation has power over the Periphery nation, so as to bring about a condition of disharmony of interest between them."⁶⁴ Galtung adds that the centre in a Centre nation and the centre in a Periphery nation have a harmony of interest; that there is more disharmony of interest within the Periphery nation than within the Centre nation; and that there is a disharmony of interest between the periphery in the Centre nation and the periphery in the Periphery nation. Galtung holds the view that imperialism is not simply an economic relation arising out of capitalism but has other dimensions as well. He identifies five dimensions of imperialism: political, economic, military, communication and cultural. He believes that there are two basic mechanisms of imperialism: a) the principle of vertical interaction relation, and b) the principle of feudal interaction structure.

Immanuel Wallerstein (1930-): Immanuel Wallerstein developed the 'World-system Theory'. He analysed the development of European capitalism and concluded that the world contains three layers of states: core, periphery and semi-periphery. The core has been historically engaged in the most advanced economic activities like banking, manufacturing, technology, ship-building etc. The Periphery, according to Wallerstein, provides the Core with raw materials (timbers, minerals, etc.) to fuel the Core's economic expansion. Unskilled labour from the periphery is repressed and the periphery is also denied necessary and appropriate technology. There is still another group, known as semi-periphery, which is involved in mix-production activities. Some in the semi-periphery are engaged with the Core and some with the Periphery. Core is politically, economically and socially dominant of the periphery. Thus, Wallerstein tried to develop a system-level theory, while emphasizing economy over politics.

At this point, it needs, however, be noted that not all dependency theorists are Marxists.⁶⁵ Consequently, there are some visible differences between Marxism and Dependency Theory:

- i. Marxism explains the expansion of dominant state, while Dependency Theory explains underdevelopment. In other words, Marxism explains the reasons of imperialism, while Dependency Theory explains the consequences of imperialism.
- ii. Marxist imperialism is 'self-liquidating' whereas dependency is 'self-perpetuating'. Marxists believe that imperialism itself contains the causes of its destruction. Imperialism causes war, ultimately resulting in its destruction. Dependency theorists believe that dependency is a phenomenon which results in persistent poverty of a state regardless of which country is in control.

⁶⁴ "A Structural Theory of Imperialism", in *Journal of Peace Research*, International Peace Research Institute, Oslo, 1971, p. 83.

⁶⁵ Vincent Ferraro, "Dependency Theory: An Introduction", article published by South Hadley: Mount Holyoke College, July 1996, p. 1

- iii. Some Dependency theorists hold the view that power, and not capitalism as such, is the motor-force behind dependent relationship. The relationship between the former USSR and its satellite states, for example, was not the relationship between a capitalist country and Third World countries in form. But, it paralleled to such a relationship in essence.

Dependency theorists unanimously believe that the main reason for the underdevelopment of the Third World countries is the exploitation by the developed countries. However, they differ in proposing solutions to the perpetuating problems. How can the poor countries get rid of the domination of the powerful countries?

Marxists suggest revolution as the way out whereas Liberal dependency theorists prefer evolutionary approach, i. e. maintaining linkages between the North and the South. They argue that the traditional concept of Marxist revolution is more utopian than realistic, as evidenced by the end of the Cold War, disintegration of the Soviet Union and the fall of many communist governments around the world. Similarly, the examples of Newly Industrialised Economies (NIEs), i. e. Hong Kong, Singapore, South Korea and Taiwan, has added another dimension to the possibility of development of the Third World countries. These countries have cordial and cooperative relations with the West. This kind of relationship has brought in capital and comparatively sophisticated technology, which were preconditions for their development. Some other countries such as China, India, Malaysia, Thailand, etc. and some in Latin America have also made progress following the same path.

Whatever its strengths and weaknesses, Dependency Theory has become one of the main theories of international relations. There is no disagreement that the unequal pattern of relationships between the First and the Third World countries, the domination of the developed countries over the developing ones, traditional imperialism and colonialism, and the international system created by the North are the main reasons for the underdevelopment of the South. At the same time, some inherent problems and weaknesses among the developing countries are also responsible for this situation. The need now, therefore, is to think how the Third World countries can get out of the poverty trap and other forms of socio-economic backwardness. If history is any guide, a reconciliatory approach with the West seems preferable to confrontational approach. It does not, however, mean that the developing countries have to surrender their sovereignty, forego their cultural identity and accept humiliation for the sake of development. Developing a country while preserving its socio-cultural identity is not impossible. The world has now grown more interdependent. Though the developing countries are dependent on the developed ones for capital and technology, developed countries, too, are dependent on developing countries for their security, market, labour and many other global issues like environmental degradation, terrorism, epidemics, weapons of mass destruction, etc. Former UN Secretary General, Kofi Annan, summarises this reality well when he says, "...we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights".⁶⁶ There is a need for trade-off for further cooperation among all the countries in the world. In such a situation, we can hope that the traditional practices of imperialism and

⁶⁶ Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for all*, the Secretary General's report to the United Nations General Assembly (New York: United Nations, 21 March 2005), p.6.

exploitation are no more sustainable in the long run. Therefore, maintaining a fine and delicate balance between their strengths and weaknesses vis-a-vis the developed countries seems in the best interest of the developing countries.

The three theoretical tools discussed above can provide a solid theoretical framework for explaining earlier India-Nepal water treaties. Among the Realist thinkers, E. H. Carr's concept of the balance of power, Morgenthau's focus on states' interest and power and his opinion that moral principles are futile in deciding state behavior, absence of the implication of Waltz's structural realism in India's behavior vis-à-vis Nepal, Mearsheimer's view that states endeavor to maximize power, and Wight's explanation of middle powers influencing the less-powerful countries in their neighbourhood can very well explain why Nepal was compelled to agree to the earlier water treaties with India. Equally important is the concept as propagated by Dependency Theory, especially its highlight on dominant and dependent relationship between powerful and power-less states and the compulsion of dependent states to follow the dictates of powerful partners also provides good insight into the relationship between India and Nepal. However, the later treaties, especially the 1996 Mahakali Treaty, represent the departure from the earlier unilateral behavior of India and passive submission of Nepal. How can this be explained? This change needs to be analysed from different perspective. As Dr. Arshin Adib-Moghaddam says, "Contesting the taking-for-granted facts demands radical interpretation and not the reification of apparently authoritative truisms"⁶⁷. Therefore, another approach, the approach of Constructivism, could also be useful in explaining later treaties between India and Nepal.

D. Constructivism

Constructivism, as we understand it now, was developed by Jean Piaget (1896-1980), and contributed by many others. It is argued that Constructivism, in essence, is not a theory in international relations. It is rather a theory about acquiring knowledge, applicable in education. It focuses on how students can learn better. It believes that human beings generate knowledge and draw inferences about meanings by interacting with other persons or situations. Constructivism holds the view that individuals have their own understandings about anything or everything. Such understandings are created and developed on the basis of their upbringing, prejudices and other social and familial contexts. However, as they grow up, and interact with other persons and situations, they may learn new things and also change the pattern of their understandings about other things. This process of 'assimilation and accommodation' help people have better and more realistic understandings of affairs around them. This process is also known as active learning or "learning by doing".

Though a pedagogical theory, Constructivism can be a useful tool in comparing and explaining the earlier water treaties between India and Nepal and those concluded later, in the 1990s, for example. As will be discussed in the later chapters, Nepal holds the view that the 1996-Mahakali Treaty is far fairer than the earlier ones. As will be discussed in details in the final chapter of this thesis, Nepal's experience and the awareness among the people greatly contributed in making the Treaty more balanced. As India and Nepal both have to help each other in developing and utilizing Nepal's water resources for mutual benefit, it can be hoped

⁶⁷ Dr. Arshin Adib-Moghaddam, *The International Politics of the Persian Gulf: A Cultural Genealogy* (Oxon: Routledge, 2006), p. 2.

that Nepal's gradual experience will guide it to have better deals with India in the days ahead. This is where the relevance and importance of Constructivism lies.

Synthesis of Competing Theoretical Traditions

Three theoretical traditions- international law, Realism and Dependency theory- as well as Constructivism have constituted the theoretical framework for this study. At the outset, they seem competing and incompatible with each other. International law is the outcome of serious debates and deliberations, and at times, may also be the result of power politics. Therefore, it may not reflect the general trend as a theory. Realism, on the other hand, has its own merits and largely dominates the theoretical paradigms in international relations. It recognises international law as a tool of the powerful, and ignores the perspectives of the weak and developing states, as against the philosophy of Dependency theory. Dependency also views the present legal regime as the reflection of power politics, and, as against the assumptions of Realism, seeks unity among poor and developing countries against the rich and powerful ones. In this way, questions may be raised about the appropriateness of a synthesis of these competing theories.

This study, however, has tried to establish that a synthesis of these traditions is not only possible but also desirable and necessary. International law is the ultimate basis and arbiter of relations among states, and all the treaties among states are parts of international law. On the other hand, not all treaties are concluded fairly, reflecting the true wills of all parties. Many of them are the outcomes of pressure, coercion, and power politics, as assumed by Realism. Moreover, there is a growing realization among developing states about their rights and strength. They have been working together towards creating regimes to ascertain their rights vis-à-vis the developed countries. There are many such forums aimed at creating unity among the developing countries. NAM, G-77, among others, are examples of such efforts. Thus, all these theoretical traditions have different assumptions, but they are mutually reinforcing. Besides, it has been agreed among scholars that no single theory so far is capable of explaining international relations in totality. Therefore, a synthesis of international law, Realism and Dependency is very much desirable and appropriate in explaining the regime of India-Nepal water treaties. Constructivism, however, may offer some clues as to how Nepal could move in the area of cooperation with India in the days to come.

In the concluding chapter of this thesis, the theoretical framework as discussed in this chapter has been applied to this thesis, especially to identify the reasons why Nepal agreed to conclude the earlier water treaties with India, and also to discuss the factors that contributed to making later treaties more reasonable. That chapter also demonstrates how Nepal has gradually realised the importance of its water resources for its development, how it has been trying to enhance its capacity and expertise, and how growing public awareness has been playing important role in making bilateral cooperation in water resources mutually beneficial.

This Chapter has provided theoretical framework for the study of India-Nepal water treaties. India is located at the centre of South Asia and shares borders with all SAARC countries, except Afghanistan. It also shares rivers with not only Nepal but also with Bangladesh and Pakistan. Naturally, it has issues and problems about water resources with other neighbours. The following chapter attempts to discuss water issues in South Asia, which would be helpful

in comparing and understanding India's behavior as an upper riparian (vis-à-vis Bangladesh and Pakistan) and a lower riparian (vis-à-vis Nepal).

CHAPTER THREE

WATER ISSUES IN SOUTH ASIA

Abstract

India is located at the centre of South Asia and shares borders with all SAARC countries, except Afghanistan, and shares rivers with most of them. It has water relations with Bangladesh, Bhutan, Nepal and Pakistan, and has water problems with all but Bhutan. With Bangladesh, India has the issues of Farakka Barrage and the project of Inter-linking of Rivers. Nepal has always felt that India has taken undue benefit from water treaties from it. There are many treaties and projects, but the Koshi, the Gandak and the Tanakpur agreements are mainly problematic. India and Pakistan have concluded the Indus Water Treaty and have been trying to resolve water problems under the Treaty. However, there are many issues between India and Pakistan, including the Salal Hydroelectric Project, Wullar/Tulbul Barrage Project, the Baglihar Hydroelectric Project and the Kishanganga Dam project. South Asia has some striking features such as the unilateral behavior of India, unequal and one-sided water treaties resulted from power asymmetry, absence of an overarching treaty (in case of Bangladesh and Nepal), extra-sensitivity among smaller states, and no role of regional mechanism. If these issues can be addressed, South Asian countries can have meaningful and mutually beneficial cooperation in water resources.

Mark Twain is often quoted as having said, "Whiskey is for drinking, water is for fighting over".¹ This statement seems increasingly true, as growing scarcity of natural resources, including water, has become one of the most contentious issues in international relations. Water issues have plagued the whole world. There are water-related problems in Africa, in the Americas, in Asia, in Europe, and in the Middle East. In Africa, for example, many countries share the Nile River, the Volta River, the Zambezi River, and the Niger Basin. Among these rivers, nine African countries, particularly Egypt, Ethiopia and Sudan, have vital interests and, therefore discords, over the Nile River. There are instances of the use of military force by Egypt for the control of this river. In West Asia, the conflict is more serious and problematic. The main disputes in West Asia are on the Jordan River, between Israel, Jordan and Syria. In the same region, there are disputes over the use of Tigris and Euphrates rivers, especially among Turkey (mainly the Kurds), Iraq and Syria. There are a number of water issues in other parts of the world. Some countries and regions have found solutions to their water-related problem; some have not. The East Asian countries have managed to reach an agreeable solution to the use of Mekong River; Canada and USA, too, have managed their water-related problem. Other regions are not that lucky, and water-disputes have greatly contributed to exacerbating their bilateral relations. South Asia is one of such regions.

South Asia has been plagued by many problems, some political, some economic and some cultural. Water issues have emerged, and remained, as the leading and the most prominent issues in this region, and top the agendas of many countries, especially of Bangladesh, Nepal and Pakistan, while discussing matters with India. As Imtiaz Alam says, "If there is any single most important issue that mars bilateral relations among the countries of the subcontinent, it is water."² In South

¹ Timothy Foote, "The Rape of the West", *The New York Times*, 6 September 1998.

² Imtiaz Alam, *South Asian Journal*, (Imtiaz Alam (ed. and pub.), Volume 8, April-June 2005), editorial.

Asia, water issues are not only important, they are getting increasingly critical and sensitive, and have in many instances affected other areas of bilateral relations.

India is not only at the centre of SAARC region geographically, it is also at the centre of water disputes in South Asia. Interestingly, India is the only country in the region which shares borders with all other countries; and no other countries share borders with other SAARC members.³ Naturally, therefore, India is the only country that has water issues and disputes with other countries. This region is home to international watercourses which are shared by more than two countries. The Ganges, for example, originates from China and passes through Nepal, India and Bangladesh, before flowing into the Bay of Bengal. Similarly, the Brahmaputra, which originates from China (and is known there as Yarlungchhampo), passes along with its tributaries through India, Bangladesh and Bhutan, and flows into the Bay of Bengal. However, no other countries in the region have so far any disputes or issues on watercourses, except with India.⁴ In the long run, it seems likely, and in fact would be a compulsion for Afghanistan, Bangladesh, Bhutan, China, India, Nepal and Pakistan to develop certain mechanisms to equitably and reasonably share these international watercourses. Requirements of international law and depleting resources and increasing demand, resulted from growing population and industrialization, will make such an arrangement a necessity.

In the South Asian region, India has water relations with Bangladesh, Bhutan, Nepal and Pakistan, and water-related problems with Bangladesh, Nepal and Pakistan.⁵ As noted above, one of the main reasons for this is India's central location in the region, coupled with its huge population and skyrocketing demands for power and irrigation facilities. The second reason is India's unilateralism and power politics. The third, and equally important, reason for these disputes is strong nationalistic sentiments among the other countries. Such sentiments have their roots in historical rivalries, lack of understanding and appreciation of each other's ground realities and problems, exacerbated by India's highhandedness. This chapter, therefore, intends to look separately into the major water issues between India and Bangladesh, between India and Nepal, and between India and Pakistan. In the form of conclusion, some suggestions will be made as to how these problems can be resolved and waters shared in an equitable manner.

Bangladesh and India

Bangladesh and India share 54 rivers, including the Ganges, the Brahmaputra and the Meghna. The 1996 Agreement on Sharing of the Ganga/Ganges Waters at Farakka (popularly known as the

³ Among SAARC members, Afghanistan and Pakistan are the only two countries that share border with a SAARC country other than India. However, as Afghanistan is excluded from the scope of this study, this article states that no other SAARC countries share borders except with India.

⁴ It is necessary to mention here that the Kabul River originates from Afghanistan, and the Ganges and the Brahmaputra originate from China. India has shown concerns over the Chinese projects on Yarlungchhampo River (known as Brahmaputra in India).

⁵ India has water issues with China as well. Recently, India has been expressing concern over China's possible diversion of, and projects on, Yarlungchhampo River. But, as China-India water relations are also excluded from the scope of this study, they are not discussed in this chapter.

Farakka Barrage Agreement)⁶ is said to have resolved a longstanding dispute between the two countries. However, for many people, especially in Bangladesh, the issue is not resolved, and needs to be revisited. Another major issue between Bangladesh and India is India's plan for river-linking, popularly known as the Interlinking of Rivers (the ILR), which has sounded alarm in Bangladesh. For the purpose of this Chapter, it is necessary to have a cursory look at the Farakka Barrage project, and to consider the "river-linking" plan of India.

The Farakka Barrage

The Farakka Barrage problem far precedes the creation of Bangladesh itself. India first took a decision to construct the Barrage in 1951, actual construction work began in 1961, and the construction was completed in 1971. The 25-mile long feeder canal was completed in early 1975 and came into operation from April the same year. The purpose of the construction of the barrage was to "ensure that the Hoogli River would receive, however low the flow of the Ganges may be, up to 40,000 cubic feet per second (cusecs) of water diverted from the Ganges".⁷

Ever since India's decision to construct the Farakka Barrage, the undivided Pakistan strongly opposed the project and tried hard to prevent it from moving forward. India, in a way, tried to reject Pakistan's objection claiming that the Ganges was not an international river.⁸ Despite its contention to this effect, India denounced the Barcelona Convention on 26 March 1956, which, according to Pakistan's conclusion, was aimed at going ahead with the construction of the barrage without violating international law.⁹ India's reply was that "the Barcelona convention and statute dealt with only some aspects of inland navigation and its purpose had been superseded by GATT".¹⁰ It should also be noted at this point that India and Pakistan, at this point of time, were negotiating the Indus Water Treaty, which was signed in September 1960. However, India refused to change its position or reconsider its decision to construct Farakka Barrage.

At the creation of Bangladesh in 1971, Bangladesh and India understandably had very warm and close relationship. Still, the issue of Farakka was too serious and sensitive for Bangladesh to ignore or keep aside. Therefore, it continued raising this issue with India. During the first ever visit to India by Bangladesh's Prime Minister, Shaikh Muzibur Rahman, in February 1971, this matter,

⁶ The Farakka Barrage is constructed in West Bengal, about 10 miles from the border with Bangladesh. The Barrage is about 2240 metres long, and has a capacity of diverting 40,000 cubic feet per second of water from the Ganges. (See Salman M. A. Salman and Kishor Upreti, *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective*, pp. 135-136.

⁷ *Ibid.*

⁸ India had been taking a position that the Ganges was not an international river. This position is based on the ground that about eighty per cent of the Ganga Basin area lies within Indian territory. Therefore, from Indian perspective, discussions on the Ganges with other countries would go against India's existing position. For details, please see Ben Crow et al., *Sharing the Ganges-The Politics and Technology of River Development* (New Delhi: Sage Publications, 1995), p. 84.

⁹ India ratified the Barcelona Convention on 02 August 1922. Article 1 of the Convention states: "Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterways, or to reduce the facilities for navigation, and on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation".

¹⁰ Salman M. A. Salman and Kishor Upreti, *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective*, p. 136

too, was discussed; and the Joint Communiqué issued on 8 February mentions this matter. Again, during the visit to Bangladesh by India's Prime Minister, Indira Gandhi, Farakka Barrage was one of the two most prominent issues discussed (the other was about the refugees). The Treaty of Friendship, Cooperation and Peace between Bangladesh and India, signed on 19 March 1972, also mentions water issue. It says, "the parties agreed to make joint studies and take joint action in the fields of flood control, river basin development and the field of hydroelectric power and irrigation". It is noteworthy that the two countries, in this Treaty, agreed to take *joint* measures for development and utilization of water resources.

Farakka Barrage could create serious problems for Bangladesh. During the lean season, from January to May every year, the flow of the Ganges used to go as down as 50,000 to 55,000 cusecs. Diversion of 40,000 cusecs from the feeder canal could be disastrous for Bangladesh, and could result in serious drought. Bangladesh claimed that "there is not enough flow in the Ganges that could be diverted through Bhagirathi-Hoogli to flush Calcutta port and at the same time maintain the agriculture, ecology and economy of the areas downstream, particularly the southern part of Bangladesh".¹¹ During the hey-days of Indo-Bangladesh friendship, i. e. in the 1972-73, the two countries constituted Joint River Commission, and Bangladesh tried to take some measures for damage-limitation. Gradually, Bangladesh came to realize that Farakka Barrage was a *fait accompli*, and that it was not possible to undo it. Consequently, the countries signed a short-term Partial Agreement in 1975, in which they agreed on a water sharing formula. Such short-term arrangements were agreed upon again in 1977 and 1982. Bangladesh and India also concluded another MoU on Teesta River in 1985.

If we look at the negotiations between Bangladesh and India from the very beginning, we realize how Bangladesh had been gradually losing ground. Bangladesh had taken this issue to the United Nations, but not much was achieved except the Consensus Statement of November 1976.¹² Its proposal for construction of storage reservoirs in the upper reaches of the Ganges (in India and Nepal) also went unheeded. The 1975 Accord contained a clause that guaranteed a certain amount of water for Bangladesh, but such guarantee clauses were absent from the 1977 Agreement and the 1982 MoU.

Finally, the two countries concluded Ganges Water Treaty in 1996, which will remain valid for 30 years. This treaty, for the time being, resolved the longstanding issue between the two countries. However, there are still concerns about the guarantee of minimum flow for Bangladesh.¹³ Through this Treaty, Bangladesh tacitly accepted that construction of storage reservoirs in the upper reaches of the Ganges could not be possible. India, on its part, gave up its demand for augmentation of the rivers in the region (particularly Brahmaputra) for bilateral use.

¹¹ Emaduddin Ahmad, *South Asian Journal*, Imtiaz Alam (ed. and pub.), Volume 8, April-June 2005, p. 55.

¹² Bangladesh decided to take the dispute with India to the United Nations on 21 August 1976 stating that it "cannot wait indefinitely, we want an expeditious solution of Farakka before the next dry season". It circulated a White Paper, which was responded by India with its own paper. Though Bangladesh succeeded in getting the issue included in the agenda of the 31st Session of the General Assembly and have it discussed in the Political Committee, it could not muster enough support to get its resolution passed. Finally, the Consensus Statement was adopted.

¹³ Emaduddin Ahmad, *South Asian Journal*, Imtiaz Alam (ed. and pub.), Volume 8, April-June 2005, p. 64

India's Inter-linking of Rivers Project

Another problematic issue between Bangladesh and India is India's Inter-linking of Rivers project. India has announced to undertake the river-linking project, which intends to link major rivers in the eastern region, possibly including the diversions from the Ganga and the Brahmaputra. It is aimed at diverting water from "water-surplus areas" to "water-deficit areas". Interestingly, the Ganges and Brahmaputra basins have been identified as marginally surplus and surplus areas, respectively. At the same time, most of the western and south-western areas of India have been identified as water-deficit areas. Under this project, India intends to divert a large volume of water from its eastern region (i. e. from Ganga-Brahmaputra basin) to its western and south-western regions. Bangladesh has taken it seriously, and has voiced its serious concern to the Indian side. Though "the response from India has been discouraging to initiate a fruitful dialogue on the issue"¹⁴, "with a change of government in India, that project is under review".¹⁵

As this is a massive project, sometimes also referred to as the largest diversion project in the world, and far greater than China's Three Gorges Project,¹⁶ it deserves some detailed discussion.

In fact, river linking is not a new idea for India. There are records of Sir Arthur Cotton's idea of linking rivers in southern India for inland navigation in the 19th century. This plan was partially implemented, with the restoration of Grand Anicut, but was later abandoned and is not much discussed now. In 1972, K. L. Rao, then Irrigation Minister, brought out an idea of three link canals between Brahmaputra and Ganga, between Ganga and Cauvery, and between Narmada and Rajasthan. Another idea that caught Indian sentiments was that of 'Garland Canal', an idea generated by an air pilot, Captain Dinshaw J. Dastur in 1975.¹⁷ These projects did not materialize, mainly due to financial and technical reasons.

In 1980, India's Ministry of Water Resources framed National Perspective Plan for inter-basin transfer of water. Subsequently, the National Water Development Agency (NWDA) was constituted in 1982, with a view to initiating and developing plans for inter-basin water transfers. The Agency undertook detailed study and proposed to link 37 rivers through 30 links: 14 links in the Himalayan component, and 16 links in the peninsular component¹⁸. The links are as follows¹⁹:

¹⁴ *Ibid.*

¹⁵ Ramaswamy R. Iyer, *South Asian Journal*, Imtiaz Alam (ed. and pub.), Volume 8, p. 16.

¹⁶ Ramaswamy R. Iyer, "River-Linking Project: A Critique" in Yoginder K. Alagh, Ganesh Pangare and Biksham Gujja (eds.), *Interlinking of Rivers in India: Overview and Ken-Betwa Link* (New Delhi: Academic Foundation, 2006), pp. 53-54.

¹⁷ Dr. Dwarika Nath Dhungel and Shanta B. Pun, *The Nepal-India Water Relationship: Challenges* (Springer Science + Business Media B. V. 2009), p. 221.

¹⁸ Though the IRL is frequently referred to as a 30-link project, it has in fact only 29 links. Only one of the two links (Manas-Sankosh-Teesta-Ganga and Jogighopa-Teesta-Farakka) is to be constructed. Initially, the Jogighopa-Teesta-Farakka link was proposed; but keeping in view Bangladesh's disagreement over this link, another link, i. e. Manas-Sankosh-Teesta-Ganga link has been proposed as an alternate link.

¹⁹ Yoginder K. Alagh, Ganesh Pangare and Biksham Gujja (eds.), *Interlinking of Rivers in India: Overview and Ken Betwa Link, Link* (New Delhi: Academic Foundation, 2006), pp. 30-31.

A. The Himalayan Component

- | | |
|------------------------|---|
| 1. Koshi-Mechi | 8. Chunar-Sone Barrage |
| 2. Koshi-Ghagra | 9. Sone dam-Southern Tributaries of Ganga |
| 3. Gandak-Ganga | 10. Manas-Sankosh-Teesta-Ganga |
| 4. Ghagra-Yamuna | 11. Jogighopa-Teesta-Farakka (alternate) |
| 5. Sharda-Yamuna | 12. Farakka-Sunderbans |
| 6. Yamuna-Rajasthan | 13. Ganga (Farakka)-Damodar-Subernarekha |
| 7. Rajasthan-Sabarmati | 14. Subernarekha-Mahanadi. |

B. The Peninsular Component

1. Mahanadi-Godavari
2. Godavari (Inchampali)-Krishna (Nagarjunasagar)
3. Godavari (Inchampali)-Krishna (Pulichintala)
4. Godavari (Polvaram)-Krishna (Vijaywada)
5. Krishna (Almatti)-Pennar
6. Krishna (Srisailem)-Pennar
7. Krishna (Nagarjunasagar)-Pennar (Somasila)
8. Pennar (Somasila)-Palar-Cauvery (Grand Anicut)
9. Cauvery (Kattalai)-Vaigai-Gundar
10. Ken-Betwa
11. Parbati-Kalisindh-Chambal
12. Par-Tapi-Narmada
13. Damanganga-Pinjal
14. Bedti-Varda
15. Netravati-Hemavati
16. Pamba-Achankovil-Vaippar.

Justification for the Project

Many reasons have been presented to justify the ILR project. With fast growing population, it is estimated that India's per capita availability of water has declined from 5.20 thousand cubic metres (TCM) per annum in 1950 to 1.80 TCM in 2000; and will decrease further to 1.34 TCM by 2025.²⁰ Similarly, demand for food is growing and will further grow in the years ahead. Sufficient food supply will require improved irrigation networks. To address these challenges, interlinking of rivers is a necessity for India.

The ILR project has some specific objectives. The first objective is to control floods at eastern areas and mitigate effects of drought on western/southern parts. It has also a stated objective of transferring 'surplus' water, especially in Brahmaputra and Ganga rivers, to 'water deficit' areas. This objective also assumes to store flood water in rainy seasons and transfer it to water deficit areas. It will help expand and improve irrigation facilities, thereby contributing to enhance food production. The third objective is power generation. According to the Report on Economic Impact of IRL Programme, this project is estimated to a net generation of either 24,801 MW (from Manas-Sankosh-Teesta-Ganga Link) or 19,570 MW (from Jogighopa-Teesta-Farakka Link).²¹

²⁰ National Council of Applied Economic Research *Economic Impact of Interlinking of Rivers Programme*, (New Delhi, April 2008), p. xi.

²¹ *ibid.*

A Report on Economic Impact of Interlinking of Rivers Programme prepared by National Council of Applied Economic Research, has identified some added benefits from the project. In addition to the objectives and benefits mentioned above, the Report claims that the canals would be used as waterways for navigation, thus reducing stress on road/rail transport. The ILR programme, the Report adds, could minimize the adverse effects of droughts and floods which incurred economic losses equivalent to US Dollar 4,604 million during 1990-2001. Besides, the programme would also help increase access to safe drinking water and reduce child illness and mortality.

This Report goes one step further and claims that the project is necessary also to maintain economic growth to support India's objective of attaining status of developed country by the early/middle of this century. The project has hydroelectricity component as well as a social objective of promoting understanding and cooperation among states, thereby help consolidating union integration.

The IRL Project is a massive project requiring a huge amount of money. The initial cost was estimated at 5,60,000 crore Indian Rupees at 2002-3 price, i. e. 123 billion US Dollars. However, the revised cost of the project is 444,331.20 crore Indian Rupees if the Manas-Sankosh-Teesta-Ganga Link is implemented, and 434,657.13 crore if the Jogighopa-Teesta-Farakka Link is implemented. Members of the Task Force, constituted by the government for working out the modalities, have, however, suggested that the actual cost may exceed one million crore Indian Rupees.²² This amount excludes environmental and social costs, which include an estimated submergence of 8000 sq. kilometres of land affecting thousands of villages and towns, displacement of millions of people, submergence of 50,000 hectares of forests just by the peninsular links, alteration of river systems catastrophically creating new droughts and deserts, destruction of fisheries, seawater ingress, water-logging and salinity and spread of toxicity to other rivers by highly polluted rivers, etc.²³

The earlier, NDA Government of India, led by the Bharatiya Janata Party, seemed more focused and eager to implement the river linking project. The project was given high priority by the government. Interestingly, President APJ Abdul Kalam highlighted this project in his Independence Day speech in 2002²⁴, which was the basis for a Public Interest Litigation (PIL) in India's Supreme Court. In October 2002, the Supreme Court advised Indian Government to formulate a plan to interlink rivers by 2006, and ultimately complete the project itself by 2012. In accordance with the order, the Government appointed a Task Force in December the same year, led by Mr. Suresh Prabhu, and the deadline was revised to 2016.

It is interesting to note that the present United Progressive Alliance (UPA) Government seems more cautious and less enthusiastic about the project. Even the National Commission for Integrated

²² A Booklet compiled by 'Rivers for Life', an independent research action group comprising engineers, concerned citizens and other professionals which works on water issues in India with members based in India and US, p. 4. (Booklet available at www.riversforlife.net>, accessed on 30 November 2010).

²³ *ibid.*

²⁴ In his Independence Day Speech of 2002, Dr. APJ Abdul Kalam said, "The first mission (of my Government is) on the networking of Rivers... This will eliminate the periodical problem of droughts and floods... and provide both water and power security." The President also emphasized later, "Instead of thinking of interlinking of rivers only at times of flood and drought, it's time that we should implement this programme with a great sense of urgency."

Water Resources Development (NCIWRD), constituted in 1999 basically to review reports of National Water Development Agency, concluded that it saw "no imperative necessity for massive water transfers in the peninsular component".²⁵ It also suggested that Himalayan component would require more detailed study.

The ILR project has gathered mixed reaction in India, and negative reaction in Bangladesh and Nepal. In India, some have presented this project as a panacea to all ills. Ramaswamy R. Iyer mentions a TV serial in Tamil Nadu, a southern state of India, in which the state is projected as the "*Swarga*" (heaven), and the theme song "rises to a crescendo with the line 'if Ganga and Cauvery are linked, Tamil Nadu will be *Swarga*'".²⁶ Most official publications and statements, too, speak highly of the project.

On the other hand, there are views against the project: both at home in India and abroad. The huge cost of the project has raised questions whether it is viable at all. Some have even taken it as an example of judicial activism, as India's Supreme Court has directed the government to implement it within a timeframe.²⁷ Analysts have also asked for clarification whether it is just a concept or a project. As the government has not made all the documents public, there is a big ambiguity about the project. Experts have also raised questions whether the objectives of increased food production, bridging the gap between water 'surplus' and water 'deficit' areas, flood diversion and drought reduction are realistic.²⁸ Many analysts have suggested that the solution lies mainly on water-management and not on water transfers.

As the Brahmaputra and the Ganga are international rivers, utilization of waters from these rivers has international dimensions. As Bangladesh and Nepal are co-riparians of the Brahmaputra and the Ganga rivers, their rights and views need to be considered while undertaking any projects on those rivers. Nepal is mainly concerned about the possible submergence of its land resulting from dams constructed and to be constructed by India along India-Nepal border. But, Bangladesh has serious concerns about this project.

As Bangladesh is the lower riparian, its concerns are real and legitimate so far as India's projects on the common rivers affect flows into Bangladesh. Bangladesh's first concern is that it may violate the 1996 Ganges Agreement, which guarantees certain amount of water for Bangladesh from the Ganges in the dry season. It also fears that the unilateral implementation of the project by India goes against Article IX of this Treaty which says, "(g)uided by principles of equality, fairness and no harm to either party, both the Governments agree to conclude water-sharing

²⁵ The Booklet compiled by 'Rivers for Life' <www.riversforlife.net>, p. 1.

²⁶ Ramaswamy R. Iyer, "India's River Linking Project: Should Bangladesh Worry?" in *The Daily Star* (15th Anniversary Special Issue) (Dhaka: 19 February 2006).

²⁷ Ramaswamy R. Iyer, *Water: Perspectives, Issues, Concerns* (New Delhi: Sage Publications India Ltd., 2003), pp. 309-11.

²⁸ See, for details, Yoginder K. Alagh, Ganesh Pangare and Biksham Gujja (eds.), *Interlinking of Rivers in India: Overview and Ken Betwa Link, Link*, pp. 23-48.

Treaties/Agreements with regard to other common rivers".²⁹ Apart from such legal objections, Bangladesh has some practical fears. These anticipated fears include-

- a. Loss of 3 million tons of food-grains annually;
- b. Perpetual water-logging of about 240,000 hectares of highly fertile land in north west Bangladesh;
- c. Destruction of many ports, clogging of water arteries, and other economic problems such as unemployment;
- d. Destruction of forest resources and forest-related industries, resulting in unemployment of over 300,000 workers;
- e. Destruction of fisheries and fisheries-related industries;
- f. Affecting quality of water as well as the supply of safe drinking water; and
- g. Serious effects on ecology and natural environment.³⁰

A serious debate is going in Bangladesh about the project. The Bangladesh Government has also formally informed India of its concerns. It is yet to be seen whether the project will be actually implemented as it is conceived till now, and, if it is implemented, how far the concerns of Bangladesh will be addressed.

India and Nepal

India and Nepal have concluded a number of treaties/agreements on water resources. The main among them are the Sharada Barrage Treaty of 1920, the Koshi Agreement of 1954, the Gandak Agreement of 1959, the Tanakpur Agreement of 1991 and the Mahakali Treaty of 1996. There is a feeling among the Nepalese people that these treaties/agreements are unequal, and one-sided in favour of India at the cost of Nepalese interests. As the coming chapters will discuss all these treaties and agreements in detail, this chapter has tried to avoid repetition.

India and Pakistan

India and Pakistan had serious dispute on the rivers in Indus river system. However, they have resolved the dispute by concluding the Indus Water Treaty on 19 September 1960 with the mediation of the World Bank. This Treaty has stood major wars between India and Pakistan, and has been successful in regulating water issue between the two countries.

The Indus River originates near Mansarovar in Tibet, and is about 2,000 miles long. The Indus system of rivers comprises three principal tributaries in the West: the Kabul, the Swat and the Kurram; and five principal tributaries in the East: the Jhelum, the Chenab, the Sutlej, the Beas and the Ravi. The Indus basin covers a drainage area of 450,000 square miles.³¹

Disputes over the Indus system of rivers began long before the creation of Pakistan. Historically, the disputes emerged as inter-state differences among Punjab, Sindh, Bahawalpur and Bikaner. A

²⁹ Article IX of Treaty between the Government of the People's Republic of Bangladesh and the Government of the Republic of India on Sharing of the Ganga/Ganges Water at the Farakka, concluded in New Delhi on 12 December 1996.

³⁰ For details, please see *The Nepal-India Water Relationship: Challenges*, pp. 231-32.

³¹ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asian Rivers*, page 37.

tripartite agreement was signed among Punjab, Bikaner and Bahawalpur as early as 1919.³² However, the issue developed into an international dispute, especially between East (Indian) and West (Pakistani) Punjab, after the creation of Pakistan in 1947. Since the boundary of the two states had not by then been demarcated, the British Act of Parliament did not deal with the allocation of water between India and Pakistan. As mentioned by Salman M. A. Salman and Kishor Uprety, Mr. Radcliffe "in his deliberations did acknowledge the importance of the Indus system to both countries, but did not make any explicit recommendation other than to hope that they would work together in finding a solution".³³ India and Pakistan, though with serious differences and problems, managed to work out a *modus operandi* through the Stand Still Agreement of 20 December 1947, the Delhi Agreement of 4 May 1948, and the understanding of 10 March 1952. Finally, in 1960 they succeeded in signing the Indus Water Treaty. The World Bank played crucial functional role in the negotiations on the Treaty. The Bank also acted as the Administrator of the Indus Basin Development Fund.

The preamble of the Indus Water Treaty says that the two Governments were "equally desirous of attaining the most complete and satisfactory utilization of the waters of the Indus system of rivers", and recognized the need of "fixing and delimiting, in a spirit of goodwill and friendship, the rights and obligations of each in relation to the other concerning the use of waters and of making provision for the settlement, in a cooperative spirit, of all such questions as may hereafter arise...".³⁴

According to the Indus Water Treaty, all the waters of the Eastern Rivers, viz. the Sutlej, the Beas and the Ravi, shall be available for the unrestricted use of India. Pakistan agreed not to permit any interference with the waters of the Eastern Rivers, except for domestic and non-consumptive use. Similarly, all the waters of the Western Rivers, viz. the Indus, the Jhelum and the Chenab, shall be available for unrestricted use of Pakistan; and India would not interfere with their waters, except for domestic and non-consumptive use. However, in addition to domestic and non-consumptive use, each country was allowed to use waters of the rivers allocated to the other party for agricultural use (as set out in Annex C) and generation of hydropower (as set out in Annex D).

Under the Treaty, India and Pakistan also agreed to cooperate in undertaking engineering works, and to exchange data and other relevant information. Besides, they also agreed on a comprehensive dispute settlement mechanism. According to the Indus Water Treaty, disagreements between the parties on the interpretation of the provisions of the Treaty are classified into three categories: 'questions', 'differences', and 'disputes'. Questions are examined by the Permanent Indus Water Commission, comprising a Commissioner from each party, 'differences' by a Neutral Expert to be appointed by the World Bank, and 'disputes' by a Court of Arbitration.

The Indus Water Treaty tried to address every concern of both India and Pakistan. Some opine that "[e]very conceivable safeguard that Pakistan's engineers and lawyers could suggest was included to prevent India from altering the amount or the time of its water supplies to Pakistan during the transition period".³⁵ However, there are some complains, too, on both sides. To quote Ramaswamy

³² *Ibid.*, pp. 40-41

³³ *Ibid.*, p. 42, note 15.

³⁴ Preamble to the Indus Water Treaty of 1960.

³⁵ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation...*, page 50.

R. Iyer, [m]any in India feel that the allocation of 80 per cent of the waters to Pakistan and 20 per cent to India was an unfair settlement foolishly accepted by the Indian negotiators; and many in Pakistan argue that the territories that went to India under Partition were historically using less than 10 per cent of the Indus waters, and that the Treaty was generous to India in giving it 20 per cent of the waters".³⁶ However, Mr. Iyer concludes that both are "fallacious" arguments, and that 20 per cent is not *ipso facto* low, nor is *a priori* view on what is fair is possible.³⁷

Although the Indus Water Treaty is internationally regarded as a successful example of conflict resolution, it has its admirers and critics in India and Pakistan. For admirers, the Treaty has succeeded in managing water relations between the two countries. At the same time, there are critics of the treaty, both in India and Pakistan. Those in India lament that the Treaty has presented obstacle for India to run projects in its territory, especially on the rivers belonging to Pakistan. They contend that India is entitled to develop run-of-the-river hydroelectricity projects. But, many such projects have been stalled due to Pakistan's objections. Critics in Pakistan hold the view that India has violated, and has been trying to violate the provisions of the Treaty.

The disputes between India and Pakistan relate not to the Indus Water Treaty as such. They relate to various projects initiated by India on the western rivers. One project has been completed so far, and some more have been planned on the rivers belonging to Pakistan. Such projects include the following:

1. The Salal Hydroelectric Project: This project was initially conceived in 1920, long before the partition of India. However, the feasibility studies commenced in 1961, and the construction started in 1970. The first stage of 345 megawatts was commissioned in 1987 and the second stage of the same capacity was commissioned in 1995.

The Salal project is constructed in the Chenab river, at Dhyangarh in Reasi District of Jammu and Kashmir, the part of Kashmir under Indian control. It has a generation capacity of 690 mega watts. It has a 118 metres high and 630 metres long rock-fill dam, and 113 metres high and 450 metres long concrete dam, with two 2.46 kilometres long tailrace tunnels of 11 metres in diameter. It has six generating units with a capacity of 115 MW each.

The Salal Hydroelectric project drew attention of, and objection from, the Pakistan Government. This matter remained under the preview of the Indus Water Commission for a long time, and of the two governments thereafter. However, Pakistan accepted the project with some changes in the proposal.

2. Wullar/Tulbul Barrage Project: The Wullar Barrage Project, which is known in India as Tulbul Navigation Project, started in 1984. The Barrage is located at the outfall of Wullar Lake in the Jhelum river in Baramulla district in India controlled Jammu and Kashmir state. The barrage will be 439 feet long and 40 feet wide, with a maximum storage capacity of three hundred thousand acres feet of water. The barrage aims to retain enough water level in Jhelum River for a 20-km

³⁶ Ramaswamy Iyer, "River-Linking Project: A Critique" in Yoginder K. Alagh, Ganesh Pangare and Biksham Gujja (eds.), *Interlinking of Rivers in India: Overview and Ken-Betwa Link*, page 18.

³⁷ *Ibid.*

navigational route between Baramulla and Wullar Lake so that its controlled release would make the Jhelum River navigable throughout the year.

Though the construction of the barrage started in 1984, Pakistan knew about it only in 1986. Following Pakistan's objection, the construction has been halted from 1987.

India and Pakistan hold different views about this project as well. Pakistan maintains that any attempt to block the flow of water on river Jhelum constitutes a violation of the Indus Water Treaty and that storage for navigational purposes is not permissible under the Treaty. Pakistan has also questioned the very rationale of the barrage in view of the availability of several improved communication links, serving as better alternatives to river navigation in the area. India, on the other hand, argues that Article 3 Para 4 of the Indus Water Treaty allows, as an exception, such constructions under certain conditions and technical specifications as enlisted in Annex D and E of the Treaty.

Many rounds of meeting have been held to discuss the matter. It came close to a settlement in 1991 when both sides seemed to agree on a draft agreement. But it could not be signed, and the matter remained as before. Later, in 2004, it was included as a point for discussions under India-Pakistan Composite Dialogue. Analysts agree that this issue, along with the issue of Sir Creek, is close to agreement. But, as the Composite Dialogue has been stalled after the Mumbai attack of 26 November 2008, this project has also been halted.

3. The Baglihar Hydroelectric Project: The Baglihar Hydroelectric Project is one of the most discussed projects on the Indus Basin Rivers. The Project is located on the Chenab River, about 120 kilometres upstream of Indo-Pakistan border, in Indian-controlled Jammu and Kashmir. It has two stages, each with a generating capacity of 450 MW of electricity. This project was initially conceived in 1992, was approved by the Government of India in 1996, and its construction began in 1999. The first stage was commissioned in 2005, and the second was planned to be completed by the first quarter of 2008. The project envisages the construction of a dam with 144.5 metres in height and 317 metres in length, with a storage capacity of 321,048 acre feet of water.

Pakistan has been raising questions on the project since 1992 itself, ever since the project was conceived. Pakistan holds that this project, too, violates the provisions of the Indus Water Treaty, and has six main objections on the construction of the dam: on pondage level, gated spillways, lower water level, level of intake tunnels, height of gates and elevation of the tunnels. Pakistan feared that the dam would reduce the supply of water to Pakistan by as much as 8,000 cusecs per day.³⁸ It also contends that the gated structure would provide India the capability to manipulate the flow of water to Pakistan's disadvantage. India, on its part, contends that, since it is a run-of-the-river project, it fully complies with the Indus Waters Treaty. In spite of several rounds of discussion under the Permanent Indus Water Commission, the two sides could not reach any agreement. Pakistan thought that India was following the same old tactics of delay and "tiring you out", creating facts and recourse to bilateralism and refusing involvement of a third party.³⁹

³⁸ "Baglihar Hydroelectric Project: Delhi proposes dates for Inspection". *Dawn*, Islamabad: 6 October 2003.

³⁹ R.G Wirsing & C. Jasparro, *Spotlight on Indus River Diplomacy: India, Pakistan, and the Baglihar Dam Dispute* (Honolulu, Hawaii: Asia-Pacific Center for Security Studies, May 2006), p. 4

Pakistan persisted with its demand that India stop the construction until a negotiated settlement could be reached. India, however, refused to stop the work, fearing that it would be just a folly, as in the case of Wullar Barrage. Ultimately, Pakistan approached the World Bank on 15 January 2005 stating that differences had arisen on the Project, and requesting the Bank to appoint a Neutral Expert, as provided for by the Indus Water Treaty. Accordingly, the World Bank appointed Prof. Raymond Lafitte as the Neutral Expert in May 2005. Pakistan's contentions were based broadly on the following four points: design and height of the dam, required pondage, the level of intakes, and the very requirement of the spillways.

The Neutral Expert gave its determination on 12 February 2007. The Determination found that the Freeboard of the dam was not at the lowest elevation, and, therefore, needs to be reduced by 1.5 metres; the pondage capacity should be reduced by 13.5 per cent; and the intake level should be raised by 3 metres; and that the height and gated control of the spillways conform to the engineering norms of the day. Both India and Pakistan welcomed the verdict as their victory: India felt that the changes recommended by the Neutral Expert were technical and minor, and would not affect the power generation capacity. Pakistan, on the other hand had claimed victory as the Determination had found that three of its four claims were acceptable and valid. However, there were internal discontents on both sides. For India, the verdict had set a precedent which might have to be followed in all such projects. For Pakistan, the verdict had offered *carte blanche* to India to build more dams.

4. The Kishanganga Dam: The Kishanganga Project is located in Baramullah District of Kashmir. It plans to divert water of the Kishanganga (known in Pakistan as the Neelum), a tributary of the Jhelum River, to Bunar Madhumati Nullah, another tributary of the same (Jhelum) River, near Bunkot. If, and when, the project is completed, the Neelum and the Jhelum rivers, which now join each other at Domali near Muzaffarabad in Pakistan, will meet in Indian territory.

According to plans, India intends to generate 330 megawatts of electricity from this project.

Pakistan objects to the project claiming that the project violates the Indus Water Treaty. It argues that the project reduces the flow of water into Pakistan and also badly affects the environment. In specific terms, Pakistan holds that the project-plan stands against the Treaty in its gate structure, height and size, level, diversion plan, storage capacity, power intact and freeboard. It also argues that the Treaty does not allow diversion of water. It also says that the project affects its proposed, 969-megawatt Neelum-Jhelum hydropower project.

Pakistan objected to the project in 2004, and India revised the plan. But, it was not up to Pakistan's demands. So the issue has remained unsettled. Pakistan recently claimed that India has already completed the 22-kilometre tunnel to divert the water, and "was working to complete the 330 MW project by 2016"⁴⁰. Pakistan Tribune quoted Mr. Jamaat Ali Shah, Pakistan's Indus Water Commissioner, as having said, "with the diversion of water, Pakistan would face deficit of 21

⁴⁰ Pakistan Tribune, Islamabad: 12 November 2010 <www.paktribune.com>, accessed on 23 December 2010.

percent water which would reduce 16 percent power production, causing a loss of about Rs 5 billion in one year”.⁴¹

Though there are disputes between India and Pakistan on a number of Indian projects on the 'western' rivers,⁴² one thing is very clear: both have taken recourse to the Indus Water Treaty. In all the disputes so far, Pakistan has claimed that India had violated the Treaty. And India has been claiming that its projects on those rivers are fully compatible with the Treaty. Neither side has formally questioned the validity of the Treaty⁴³. Herein lies the success and relevance of the Treaty.

As noted above, the conclusion of the Indus Water Treaty was an achievement for both India and Pakistan. The negotiations on the Treaty not only helped avoid war between the two countries,⁴⁴ it has also provided a strong framework for settling water disputes. Whatever the interpretations and understandings of India and Pakistan, experts hold the view that disputes between India and Pakistan can be resolved under the framework of the Indus Water Treaty, as exemplified by the Determination on Baglihar. The Treaty is also an example of the effectiveness of the third-party mediation in dispute settlement.

Visible Features and Future Prospects

The analysis of the water issues in South Asia shows some striking features. The first of such features is the unilateral behaviour of India. India constructed Farakka Barrage against the protest of Pakistan. Such unilateral behaviour can be seen in relation to Bangladesh, too. Moreover, similar trend were visible with regard to Nepal as well. The Koshi and the Gandak Agreements were implemented with the consent of the Nepalese Government, but a clear example of high handedness and unilateralism can be seen in the case of Tanakpur Barrage. However, such behaviour is not frequent with Pakistan.

⁴¹ *Ibid.*

⁴² Pakistan side claims that India has plans to construct over hundred projects on the western rivers. See *Pakistan Tribune* as above.

⁴³ It needs, however, to be mentioned that people on both sides have some reservations on the Treaty. In Pakistan, they are not happy that the Treaty gives 20 per cent of water to India. They also complain that India has been building dams and other projects in violation of the provisions of the Treaty. On the other hand, people on Indian side express dissatisfaction at Pakistan's objection to any project. Mr. Ramaswamy Iyer, in his book, *Towards Water Wisdom: Limits, Justice, Harmony* (New Delhi: Sage Publications, 2002), says that the two countries have been taking opposite approach. India, he says, first considers the viability of a project, and then tries to bring it in conformity with the Treaty. Pakistan, on the other hand, tries to find faults with the technicalities of the project. Therefore, these divergent approaches are the main reasons for the dispute. In view of this, B. G. Verghese has suggested Indus-II, meaning conclusion of another treaty to replace the existing Treaty (for details, please see *The Tribune*, Chandigarh: 25-26 May 2005). Many, including Mr. Iyer, opine that a treaty better than the existing one for India, is rather not possible. See *Towards Water Wisdom: Limits, Justice, Harmony* (New Delhi: Sage Publications India, Pvt. Ltd., pp. 76-77).

⁴⁴ Salman M. A. Salman and Kishor Uprety, in *Conflict and Cooperation on South Asia's International Rivers*, write, " In this situation (in which India claimed after the expiry of Stand Still Agreement that the West Punjab had no rights to any share of waters), one option for Pakistan was war, and there were many who advocated for it...". See Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective*, p. 43.

The second feature is the asymmetric power-relationship between states that has resulted in unequal treaties or one-sided behaviour on the part of the more powerful state. The Koshi Agreement of 1954 between India and Nepal demonstrated India's design to get unreasonable and undue benefits from Nepal. Similar example can also be seen with regard to Bangladesh. However, such treatment is absent in relations between India and Pakistan. The main reason for equal treatment can be accrued to the strength of Pakistan. Pakistan was well aware of its rights and obligations, it has expertise in the area of water resources; and it has managed to mobilize required financial resources.

The third feature relates to the involvement of a third party in the development and management of water resources. The World Bank's involvement was crucial and decisive in the negotiation on the Indus Water Treaty. As we have seen above, no third party was involved in cases of Bangladesh and Nepal. It can be argued that involvement of a neutral and influential third party could have resulted in better and more equitable treaties between Bangladesh and India, and between India and Nepal as well.

The fourth feature is the absence of an over-arching treaty between Bangladesh and India, and between India and Nepal. The Indus Water Treaty has provided an overarching framework for water relations between India and Pakistan, but no such frameworks exist between Bangladesh and India, and between India and Nepal. It can be argued that if there had been a framework agreement between those countries, their water relations would have been more cooperative and mutually beneficial.

One more feature visible in the area of water resources in this region is the extra sensitivities among smaller states. The unilateral behaviour and high-handedness of India has greatly contributed to creating, developing and perpetuating sensitivity, cautiousness and concerns among the people of Nepal and Bangladesh. However, it is a fact that undue cautiousness and mistrust affect the effective and realistic utilization of projects. India can be advised to show flexibility and magnanimity commensurate with its size and strength, and smaller countries should be more practical and realistic, and should refrain from being too nationalistic and sensitive.

Finally, a regional arrangement on water resources seems highly desirable. Two reasons can be cited to justify this proposition. One, under the international law, all riparian states need to be consulted while harnessing an international watercourse. As we have seen above, many rivers in South Asia originate from Tibet, a part of the People's Republic of China. Again, the Kabul River, a tributary of the Indus River, originates from Afghanistan. Therefore, a comprehensive agreement among Afghanistan, Bangladesh, Bhutan, China, India, Nepal and Pakistan needs to be worked out. Such an agreement will ensure compliance with international law, and, at the same time, make cooperation among the parties smooth, reasonable and equitable. Given India's preference for bilateralism, such an agreement may seem a little bit difficult, but ultimately, it would be beneficial for India as well. The second justification for regional arrangement is the presence of SAARC. The SAARC Charter mentions "active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields" as one of its objectives.⁴⁵ Therefore, SAARC can play an important role in promoting regional cooperation in the development of water resources in the

⁴⁵ Charter of the South Asian Association for Regional Cooperation, available at <www.saarc-sec.org>.

region. In fact the process has already begun. On 27 November 2014, SAARC leaders have concluded the SAARC Framework Agreement for Energy Cooperation (Electricity), which provides that authorized public or private entities are allowed "cross-border trade of electricity on voluntary basis".⁴⁶ This can be a useful tool for promoting the generation of hydropower on a regional basis.

Thus, if the states of South Asia and China can be more forthcoming and cooperative; if they can leave their historical baggage behind and move forward with a sense of trust and understanding; if they agree to the involvement of a third party; and if they try to harness the water resources under a regional mechanism, the people of South Asia could hope to enjoy a better and peaceful future.

This chapter discussed the major water issues among the states in South Asia. As this study attempts to study water relations between India and Nepal, a brief discussion about the overall relationship between India and Nepal would be useful to contextualize India-Nepal water relations. Therefore, the next Chapter is an overview of India-Nepal relations in general.

⁴⁶ Article 2 of the SAARC Framework Agreement for Energy Cooperation (Electricity), available at [www.saarc-sec.org/agreements and conventions](http://www.saarc-sec.org/agreements_and_conventions).

CHAPTER FOUR

INDIA-NEPAL RELATIONS: AN OVERVIEW

Abstract

Historically, Nepal was a big and powerful state, and occupied a large area of present-day India. It also had dominating relationship with Tibet. Because of this, Nepal had to confront both China and India. It lost a war with China in 1792, and with India in 1814-15. After the Treaty of Sugauli of 1816 with British India, Nepal lost about one third of its territory. After the Treaty, Nepal became weaker, and gradually had to depend on India for many things. The domestic instability and family rule further weakened Nepal. After 1947, things changed for better. Nepal became democracy in 1951, and started on a path to development and expanded international relations. However, India's dominating policy and behaviour continued even after India's independence. It forced Nepal to conclude unequal treaties and tried to use any available occasion to its favour. India and Nepal are sovereign and interdependent states; each has vital interests with the other. Nepal's interests with India include transit, political support, strategic balance, support for economic development, socio-cultural matters, etc., while areas of India's interests in Nepal cover strategic and security issues, political affairs, economic issues, natural resources and socio-cultural matters. India has been supporting Nepal's political and economic development. The main problem lies in their diverging approaches: India trying to keep Nepal under its sphere of influence, and Nepal trying to keep distance from India and remain independent. It will be difficult for India and Nepal to cooperate meaningfully without harmonising these diverging approaches.

Historians agree that Nepal was initially a unified state; but, later, it was divided into many principalities: more than forty-six in all.¹ The principalities kept fighting and making alliances against each other. It was Prithvi Narayan Shah the Great who initiated the process of unification of the principalities. Prithvi Narayan Shah was a king of a small state called Gorkha, which is now a district in Nepal. He started expanding his state, and in his lifetime, conquered the three most important principalities of the Kathmandu Valley: Kathmandu, Patan and Bhaktapur (in history, mostly known as Bhadgaun). His successors completed the process of unification, which made Nepal a big and strong country. Nepal, then, was expanded up to Teesta River in the East, and the Sutlej River in the West.² The unified Nepal was an active player in the region, and had ups and downs in its relationship with China and India.

As Nepal is situated between two big powers, China and India, preservation of its independence has always remained the paramount objective of its foreign policy. Nepal's history is a story of its continued efforts for keeping a balance between the two big powers- at times, even trying to play one power off against the other.

India-Nepal relationship needs to be looked into from different angles under different headings. It is striking that these relations demonstrate different and asymmetrical levels of closeness and distance between the two countries. In some respects, the two countries seem very close to each other, and in others, they seem worlds apart. This is clearly reflected in a statement of a scholar, who says that "India and Nepal are probably the closest neighbours in existence anywhere who

¹ There were twenty-two principalities in the Eastern part and twenty-four in the Western part of Nepal. They are commonly referred to as *baise* and *chaubise* in Nepali language, meaning twenty two and twenty-four, respectively.

² The Teesta River now is a boundary river between Bangladesh and India, and the Sutlej is one of the tributaries to the Indus River system and has been given to India by the Indus Water Treaty between India and Pakistan.

share the greatest number of differences".³ The true nature of the relationship between India and Nepal can be understood by dividing it into two parts: before India's independence in 1947, and after its independence. It is surprising that the great changes that took place in India during and after its independence from the British rule have not left any visible marks on Indo-Nepal relations. And, there is not much difference in the relationship of the two countries before and after India's independence.

India-Nepal Relations before 1947

To understand the true nature of India-Nepal relations, it is necessary to look into Nepal's relations with China and Tibet. China and India have always remained great powers, and Nepal has been providing a buffer between the two. Historically, there seems a tacit understanding between China and British India that Tibet would remain under the Chinese sphere of influence and Nepal under that of British India.⁴ In historical times also, Tibet was under heavy Chinese influence. Still, Nepal had very strong influence over Tibet. They had close economic relations. Trade was arguably the most important aspect of Nepal-Tibet bilateral relationship and, for many years, Nepalese Rupee was legal tender there. Nepal and Tibet had distinct relationship. They conducted trade, exchanged cooperation, and had better understanding of each other's positions and interests. Mainly for economic reasons, and also due to domestic developments in Nepal, Nepal and Tibet fought three major wars- in 1789, 1791 and 1854-5- which resulted in peace agreements. Similarly, Nepal and British India fought a war in 1814-15, which ended with the Treaty of Sugauli of 2 December 1815.

Nepal had different reasons for waging wars with both of its neighbours. It had deep interest in Tibet. As Leo E. Rose mentions, "for sound economic and strategic reasons, therefore, it was long a major objective of Nepali foreign policy to establish Nepal's authority over the Kerong and Kuti areas up to the watershed that is the Bhairab Langur range"⁵. A large number of Nepalese businessmen were running their businesses in Lhasa and other places of Tibet. At times, Nepal also provided a balance vis-à-vis China in Tibet. History shows that Tibetan rulers sought to maintain good relation with Nepal to minimize Chinese influence and interference. The 1791 war was initially a war between Nepal and Tibet, but later, as China came to help Tibet, it turned out to be a war between China and Nepal. On the other hand, Nepal had frictions with its southern neighbor-India. With British India, it was a war of resistance. The British rulers of India sought to penetrate into Nepal with two broad objectives: to promote their commercial interest, and to strengthen their influence there. As they had China in mind, they wanted to promote trade and commerce with Tibet first and, ultimately, with China. Nepal tried to resist the British influence, which culminated in 1814-15 war.

A closer look reveals that British India had basically two pronged strategy on Nepal. The first was to keep Nepal as a strong buffer between China and India, which could guarantee India's security. The second strategy was to promote British trade in Nepal. British India succeeded in imposing a trade treaty on Nepal as early as 1792, which sought to impose, and regulate, customs duties on

³ Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations* (New Delhi: Oxford University Press, 2005), p. xiii.

⁴ During those years, Tibet was an independent state, but in practice was under Chinese suzerainty. Representatives of Chinese Emperors, called Ambans, used to influence and guide Tibetan rulers.

⁵ Leo E. Rose, *Nepal Strategy for Survival* (Berkley: University of California Press, 1971), p. 4.

imports from both countries.⁶ Nepal always tried to downplay this treaty, as it imposed 2.5 per cent of duty on imports. Again, British India and Nepal concluded another treaty in 1801,⁷ which sought to improve relations, promote friendship, and declared that friends and enemies of either country would be considered as friends and enemies of the other. This treaty also included a provision under which serious friction with a third country needed to be reported to the other party. In addition, this treaty also revoked the practice of Nepal's Raja's sending elephants as tribute to British rulers.

During the Regency of Bahadur Shah (the grandson of Prithvi Narayan Shah the Great), Nepal had become more active, and started expanding its territory. After its defeat from the Chinese forces in 1792, it sought the country's expansion towards the east and the west. During the prime ministership of Bhimsen Thapa, Nepal was fast emerging as an expansionist kingdom, capturing territories as far as the Teesta River in the east, and Kangara in the west. There are two contradicting versions in this regard. One version, especially put forth by Nepali historians, is that Bhimsen Thapa wanted to drive the British out of Asia. For this, he invited French military trainers to train his army. He also tried to forge an alliance with Ranjit Singh, the Sikh ruler of Punjab. Another version, especially propounded by western writers, is that after the Nepalese army reached as far as the Sutlej River, Ranjit Singh got seriously concerned, and wanted to drive them out of Kangara. This version downplays Bhimsen Thapa's bravery and ambition. Whatever the truth, it was a fact that Nepal was expanding gradually, and threatened the expansion and influence of the British rulers in India. It resulted in the 1814-15 war between the British India and Nepal, which concluded with the Treaty of Sugauli of 2 December 1815. Under the Treaty, the two sides agreed to have "perpetual peace and friendship" between them. Nepal was forced to acknowledge sovereignty of British India on the territory east of Mechi River and west of Mahakali River. Nepal also had to agree not to disturb the King of Sikkim, and any dispute between Nepal and Sikkim had to be referred to British India, whose decision would be binding on both parties. Under the Treaty, the Raja of Nepal agreed never to "take or retain in his service any British subject, nor the subject of any European and American states, without the consent of the British Government"; and Ministers of each other would reside in each other's capitals. Thus, this treaty not only deprived Nepal of its conquered territories but also imposed many other restrictions on Nepalese rulers, which can very well be interpreted as a questionable infringement of Nepal's sovereignty. However, the British rulers of India realized that the Treaty "bore hard upon the Raja", and returned some parts of the Terai (plain lands) to Nepal in 1816.

After the 1815 Treaty, Nepal got really weak due both to British interference as well as internal instability and power politics. In 1846, Jung Bahadur Rana⁸ took over in Nepal. He tried to

⁶ "The Treaty of Commerce with Nepaul", concluded on 1 March 1792. For the text of the Treaty, please see Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*, Appendix I.

⁷ "Treaty with the Raja of Nepaul", ratified by the Governor General and Council on 30 October 1801, and by Nepal Durbar on 28 October 1802. For the text of the Treaty, please see Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*, Appendix II.

⁸ Jang Bahadur Rana (1816-1877) was the son of Balnarsingh Kunwar, one of the courtiers of the day. Jung was an army officer, was appointed bodyguard of the King, and also *Kaji (Minister)* for a while. He saw many ups and downs in his youth. His ambition and weaknesses in the palace encouraged him to take over the reign of power of the country following a big massacre in 1846, known in Nepal as the "*Kot Parva*". Jung Bahadur was the founder of

establish amicable relations with British India. The 1857 Sepoy Mutiny provided him with a unique opportunity. He sent Nepalese troops to help suppress the mutiny. In recognition of Nepal's support in suppressing the serious revolt of the Bengal Army, the British rulers concluded a treaty with Nepal on 1 November 1860. The Preamble to the Treaty reads:

During the disturbance which followed the mutiny of the Native army of Bengal in 1857, the Maharaja on Nipal not only faithfully maintained the relations of peace and friendship established between the British Government and the state of Nipal by the Treaty of Segowlee, but freely placed troops at the disposal of the British authorities for the preservation of order in the Frontier Districts, and subsequently sent a force to cooperate with the British Army in the recapture of Lucknow and the final defeat of the rebels. On the conclusion of these operations, the Viceroy and the Governor-General, in recognition of the eminent services rendered to the British Government by the state of Nipal, declared his intention to restore to the Maharaja the whole of the low lands lying between the River Kali and the District of Goruckpoer, which belonged to State of Nepal in 1815, and were ceded to the British Government in that year by the aforesaid Treaty.⁹

In the course of their rule, the Rana rulers of Nepal grew increasingly weaker, and became more dependent on British India for the survival of their regime. British India and Nepal concluded the Sharada Barrage Treaty in 1920, which is very much one-sided in favour of India. (This Treaty will be discussed in details in a later Chapter.) Immediately after that, on 21 December 1923, the two sides signed the Treaty of Friendship.¹⁰ This Treaty provided that there would be perpetual peace and friendship between the two countries, and recognized each other's independence, both internal and external. This Treaty also required each party to inform the other of serious friction or misunderstanding with other states, and to "exert its good offices as far as may be possible to remove such friction and misunderstanding"¹¹. Both countries committed themselves not to allow their territory against the interests of the other. The Treaty also included a provision that Nepal could import from or through British India arms, ammunitions, machinery and warlike material desired for the strength and welfare of Nepal. This Treaty also removed the provision of import customs duty on goods imported by Nepal Government via Indian ports for immediate transport, as required by 1792 Treaty.

This Treaty carries special significance in the history of Indo-Nepal relations. Firstly, it was the first treaty between British India and Nepal which recognized Nepal's sovereignty and independence.¹² Secondly, this Treaty also established special relationship between British India and Nepal by requiring each country to inform the other about serious friction with other countries, and also by including a provision that Nepal could import arms, ammunitions, etc., from or through

the Rana rule in Nepal, which continued for 104 years. He is still known in Nepal as a dictator and a person who ruled with iron fist.

⁹ Preamble to the "Treaty with Nipal", 1 November 1860. For the text of the Treaty, please see Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*, Appendix IV.

¹⁰ "Treaty of Friendship between Great Britain and Nepal", Kathmandu, 21 December 1923. For the text of the Treaty, please see Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*, Appendix VI.

¹¹ *Ibid.*, Article III.

¹² *Ibid.*, Article I.

the territory of India. This provision formally brought Nepal into Indian security umbrella. This Treaty also established special relations between the peoples of the two countries by providing national treatment to the people of the other country. Finally, it sought to allay the longstanding grievance of Nepal regarding the imposition of customs duties on Nepalese imports from other countries.

A thoughtful pondering over Nepal's strategies throughout its history reveals that Nepal has always tried to preserve its sovereignty and independence. It was true during Prithvi Narayan Shah's days, and is true even today. In his *Divya Upadesh*¹³ (divine teachings), Prithvi Narayan Shah compared Nepal with a yam between two boulders. He has opined that the southern (Indian) rulers are very clever, and advised Nepalese rulers not to attack either of China and India, and also not to surrender if attacked, etc. The crux of his advice is that Nepal is situated between two big powers, the southern rulers are clever and can go to any extent to maximise their influence, and that Nepal should always remain vigilant to preserve its independence. The primacy of the preservation of national sovereignty as state policy continues even today. All of Nepal's modern constitutions have recognised and accepted preservation of country's sovereignty, territorial integrity and national independence as one of the paramount objectives of the country's foreign policy.¹⁴

Nepal had a dynamic and active relations with its immediate neighbours from the second half of the 18th century until 1850s. However, from 1860s onwards, Nepal's power and influence gradually declined, and it became closer to, and more dependent upon, India than to its northern neighbor. It may be noted here that in 1846, the Rana rule began in Nepal, with Jang Bahadur Rana as the Prime Minister and later as *Shree Teen Maharaja*. The Rana rulers, however, had neither popular support nor international legitimacy. The power struggle between the King and the Rana Prime Minister not only created problems in governance but also weakened the state itself. Support of British India was crucial for the survival of the Rana rule in Nepal. Especially after helping crush the Sepoy Mutiny of 1857, Nepal started its tilt towards India, and relations with China remained more formal, without any substantial interactions. Nepal's internal power struggle, coupled with the people's secret movements for democracy, resulted in making the Ranas increasingly authoritarian and cruel rulers on one hand and more dependent upon India on the other. Towards the end of the 19th century, Nepal's politics and economy mostly depended on India. Nepalese rulers had to seek blessings of Indian rulers to remain in power. The Rana rulers succeeded in pleasing the British rulers in India; but after the end of British rule in India in 1947, they lost their life support and had to give in to the demands of the Nepalese people. Their 104-year long family rule came to an end in 1951, and democracy was introduced in the country. However, India's active role became visible in bringing the Ranas, King Tribhuvan and leaders of Nepali Congress party to a power-sharing agreement, which is known in Nepal as the *Delhi Deal*¹⁵. With the independence of India began the modern phase of Indo-Nepal relations.

¹³ While on his death bed, Prithvi Narayan Shah ordered his family members and courtiers to come to him, and give them a long advice, which is famous as his divine teachings (*Divya Upadesh*).

¹⁴ Article 4 (6) of Nepal's Interim Constitution 2006, for example, stipulates that the foreign policy of the state will be directed towards promoting the country's image in the international community while preserving the country's sovereignty, integrity and independence. Nepal's earlier constitutions, too, contained similar provisions.

¹⁵ Some insiders, however, have stated that there was nothing like the tripartite agreement in New Delhi. All that happened in New Delhi was a kind of understanding between India and the Rana rulers of Nepal, effectively keeping even the King out of the process. The Nepali Congress, which was the popular and people's party of Nepal, had no

India-Nepal Relations after 1947

The relations between India and Nepal after India's independence in 1947 are marked by continuity and change. India and Nepal not only share geographical boundary but also share more or less common history, culture and social traditions. As has been discussed above, the two countries had close interactions and exchanges in their history. Though Nepal's population comprises people of both Caucasoid and Mongoloid groups, the people of the Terai, i. e. the southern part of Nepal, and the hills feel themselves more close to India than to China. Members of Nepal's ruling class, both Ranas and Shahs, have marital relations with their corresponding classes in India. Even among the commoners, there exist cultural and social bonds and affinities. Pilgrims of both countries find places of worship at each other's countries, and the open border between India and Nepal has contributed to further facilitate exchanges at popular level.

It is not only the historical and cultural linkages between India and Nepal that have brought the two countries closer to each other. There are fundamental geographical, strategic, political and economic dynamics that are at play in the maintenance of close relationship between the two neighbours. Both countries have their own imperatives that have compelled each of them to have close relationship with the other. Both are interdependent in terms of their security, political stability, economic development and socio-cultural harmony. Each has certain interests and sensitivities vis-à-vis the other, which neither can ignore. Though it sounds absurd and has not been highlighted or discussed much in public, India and Nepal are very much interdependent. There is no question that India carries special significance and importance for Nepal; but it is equally true that Nepal is crucial and carries special significance for India as well. While India carries transit, political, economic, socio-cultural and strategic importance, India has strategic, political, economic, natural resources, and socio-cultural interests in Nepal. These interests and sensitivities can be discussed under the following headings.

Nepal's Interests in India

Transit Facility:

Nepal is a landlocked country, and, therefore, is dependent upon India for its access to and from the sea. Access to sea from Chinese side on the north entails very long distance, and transaction becomes unbearably costly. So far, its only access to the sea is via the Indian port of Kolkata, which is over 1100 kilometres away. India has agreed to provide Nepal with transit facility in its trade with Bangladesh, but there have been some security concerns and administrative restrictions on this route. Nepal had long ago requested India for overland transit facility up to Wagah border with Pakistan, but no progress has been noted so far. As Nepal borders only with China and India, and, as the presence of high Himalayas presents formidable challenge for Nepal in promoting business transaction via China, Nepal, in practice, is not only land-locked, but India-locked. This, perhaps, is the most serious issue for Nepal vis-à-vis India, and has made Nepal perpetually dependent upon India.

say in the so-called agreement, nor was it consulted. The agreement was imposed on it. Matrika Prasad Koirala, who became Nepal's Prime Minister for a few years in 1952, says, "In Delhi, we never sat across the table to iron out our differences and the so-called tripartite conference as such never took place. The representative of the Government of India would convey to us the views of the Ranas and of course the King was out of the picture till the finalization of the parley". M. P. Koirala, *A Role in a Revolution* (Lalitpur, Nepal: Jagadamba Prakashan, 2008), p. 176.

Political Cooperation:

Since the very beginning, India has remained a political associate, a political ideal, and an example for Nepal. India's political and social systems have always influenced Nepal. Besides, many Nepalese politician have been trained in India; and many of them actively participated in India's struggle for independence from the British rule. Even today, India provides a model for many aspects of Nepal, ranging from democracy to development and from bureaucracy to social practices. It is true that, from the very beginning, India has been playing different roles in Nepal's political developments.¹⁶ India played important role in the late 1940s to bring about democracy in Nepal. Interestingly, India also became instrumental in sustaining the party-less Panchayat system, in which King was all powerful. However, there are people who believe that Nepalese Kings, especially King Mahendra, agreed to appease India to sustain their authoritarian rule in the country.¹⁷ India also played positive role in the political movements in Nepal in 1989-90, which succeeded in overthrowing the Panchayat system and the reinstatement of democracy in Nepal. Again, India also helped Nepal's political parties during the People's Movement-2 of 2005-06, which culminated in the overthrow of the Monarchy and the elections for Constituent Assembly. Again, Mr. Pushpa Kamal Dahal, the Maoist Prime Minister, who came to power after the elections for the Constituent Assembly, publicly blamed India for the downfall of his Government after about nine months. Thus, India has been playing important and different types of roles in Nepal's political developments.

Strategic Balance:

One of the important roles that India has been playing for Nepal is providing strategic balance for its political survival. The presence of two big countries on both sides of its borders has in a way ensured Nepal's survival. In fact, Nepal's history is an account of its successful efforts for maintaining strategic balance between China and India for its political survival. This story has another side as well: both China and India have also been trying to balance in Nepal. Though Nepal has remained closer to India in terms of its geography, history, culture and political developments, India has also provided Nepal with a balance vis-à-vis China. History is full of incidents which have demonstrated China and India balancing each other in Nepal.

Socio-economic Development:

India has greatly contributed to Nepal's socio-economic development. Such cooperation ranges from infrastructure to human resource development to Nepal's trade and investment promotion. India has also been contributing to Nepal's industrialization by helping in the setting up of many industries in Nepal. As will be discussed in details later, India's share in Nepal's overall trade is over 60 per cent, about 35 per cent of overall foreign investment in Nepal and about 18 per cent

¹⁶ India's responses to Nepalese political developments can be explained in various terms. It is evidently clear that India's moves regarding Nepal have been mostly guided by Indian leaders' understanding of their national interests, rather than by some kind of political or social philosophy, policy or ideology. In contrast with the belief held by many people, India was mostly guided by its interests in its moves on Nepal in 1949-50. Surprisingly, it worked more closely with the Rana rulers than with pro-democracy activists of the Nepali Congress. It had no problems with King Mahendra as long as it felt that its vital interests were protected in Nepal. Again, it supported democratic forces in 1988-89 only after it was convinced that Nepal's monarchy was acting more closely with China.

¹⁷ Such people argue that King Mahendra agreed to shelve the issue of Kalapani (Indian forces have been occupying an area of about 37,000 sq. Km. of Nepalese land), and agreed to the 1965 agreement to appease India.

of total tourists visiting Nepal. Many Nepalese nationals have also benefitted from their employment in Indian army, which has many battalions of Gorkha Rifles.

India's Interests in Nepal

Strategic and Security Interest

For India, Nepal's geographical location is a vital asset in itself. Nepal provides India with an effective buffer with China. As has been proved historically, neither China nor India wanted to geographically meet each other. In history, there had been periods in which either could have defeated and taken control of Nepal. China, if it had wanted, could have established its control over Nepal in 1792. Similarly, British India could have done the same in the 19th or early 20th centuries. The desire of both countries to let Nepal remain as a buffer was the main reason why Nepal could preserve its independence. Even today, Nepal has been providing effective buffer for India vis-à-vis China. And, India wants to maintain its security keeping Nepal under its sphere of influence. In this connection, India wants Nepal to remain pro-India, if possible, and, if not, really neutral and balanced in its dealings with China and India. It would be very difficult for India to tolerate a pro-China and anti-India Nepal on its northern border.

Another area of concern for India is security. India and Nepal share open border, and as provided by the 1950-Treaty, nationals of both countries are allowed visa-free entry into the other country. This open and visa-free border has facilitated nationals of both countries, but there is also a danger that criminals like terrorists and smugglers can cross over to another country through the open and visa-free border. At the same time, India has remained concerned about the smuggling of fake Indian currency notes into India through the open border with Nepal. The Government of Nepal has been extending cooperation to India in controlling cross-border crimes. India wants Nepal to take all possible measures to control the entry of criminal elements into Indian territory.

Political Interest

Nepal also carries political significance for India. India and Nepal share historical linkages, and also long political relationship. India has contributed to the process of democratization in Nepal. Indian leaders have time and again stated that a peaceful, democratic and prosperous Nepal is in their interest. Moreover, it is true that Indian leaders, both in the Government and also in the Opposition, have been playing catalytic roles in the struggle for democracy run by the Nepalese people. India supported political movement in 1949-50; Indian leaders actively supported people's movement in 1989-90 which succeeded in overthrowing the party-less Panchayat system; and Indian factor played equally important role in the People's Movement-2 of 2005-6, which culminated in the election for Constituent Assembly and establishment of republican setup in the country in 2008. India believes that a democratic and stable Nepal could contribute to the maintenance of peace and stability in its northern states like Bihar and Uttar Pradesh as well as peace and security in the South Asian region as a whole.

Economic Interest

India has deep economic interests in Nepal. It had similar interests in the past, as has been discussed above. Today, India has huge trade surplus with Nepal- about \$ 2 billion in 2013.¹⁸ India accounts for about two thirds of Nepal's total trade. Many Indian businessmen have established

¹⁸ Trade and Export Promotion Centre of Nepal www.tepc.gov.np

their businesses in Nepal. Another area of commercial interest is Indian investment in Nepal. India accounts for about 45 per cent of total foreign investment in Nepal. Most of the Indian investors in Nepal have their eyes on India as a potential market. The duty-free regime provided by India to Nepal, Nepal's cheap labour force, open border between India and Nepal, and Nepal's status as a Least Developed Country (LDC) are some of the factors that have encouraged Indian investors. Similarly, many Indian tourists visit Nepal not only for business purposes but also for recreation purposes. India provides about 18 per cent of Nepal's total tourists annually.¹⁹

Interest on Natural Resources

Nepal's natural resources, especially water resources, are arguably the most important area of Indian interest. Indian interests in Nepalese rivers comprise irrigation, flood control and electricity. These are the areas that the water treaties between India and Nepal have tried to address. Rivers flowing from Nepal greatly contribute to the flow of the Ganga River (Ganges) of India. According to a study, four of the Nepal's snow-fed rivers, i. e., the Koshi, the Gandaki, the Karnali and the Mahakali, contribute 45 per cent of annual flow and 70 per cent of dry-season flow of the Ganga, "making Nepali tributaries the lifeblood of the fertile Indian lowlands".²⁰ The contribution of these rivers reaches as high as 122 per cent in June/July.²¹ These rivers are also the only source of irrigation for vast plains in Northern India, especially Bihar and Uttar Pradesh. There are thirty sites with live storage capacity of about 61 billion cubic metres, which can provide "perennial irrigation and flood control benefits in the lowlands."²² The main objective of the Koshi Agreement of 1954 was flood control and irrigation, though it has power generation component as well. Similarly, the huge electricity generation potential of the Nepalese rivers can meet the ever increasing demand for power in Northern India. According to a study, Nepal has a potential of generating 83,000 megawatt of electricity, out of which production of about 43,000 megawatt is economically feasible. Out of the 89 sites identified so far have a potential of generating 30 gigawatts (GW) of power, which can greatly help meet the demand in northern India, growing at a rate of 1 GW annually.²³

Interest on Socio-cultural Aspect

India and Nepal share similar socio-cultural history and traditions. Both countries have a majority of Hindu population. Nepal comprises areas where people of Indian origin reside (the southern part). And, India has parts where people of Nepalese origin have their abode (areas such as Sikkim, Darjeeling, Assam, Meghalaya, Kumayun, Garhwal, parts of Himachal Pradesh, to name some of them). Both peoples visit each other's countries for pilgrimage. Peoples in the bordering areas have marital relations with each other. Political boundaries aside, peoples of both countries have deep-rooted feeling of oneness, fraternity and affinity. The open border and the national treatment to people of each other's countries, as provided for by the 1950 Treaty of Peace and Friendship, have contributed to exchanges of a large number of people. Hundreds of thousands of Indians live and

¹⁹ Economic Survey, 2012-13, Ministry of Finance, Government of Nepal <www.mof.gov.np>.

²⁰ Dipak Gyawali, "Nepal-India Water Resource Relations" in *Power and Negotiation* by I. William Zartman and Jeffrey Z. Rubin, University of Michigan Press 2002, p. 130.

²¹ Ajaya Dixit, *Dui Chhimekiko Jalayatra* (Water Journey of two Neighbours) (Kathmandu: Actionaid Nepal and Nepal Water Conservation Foundation, 2002), p. 6.

²² *Ibid.*

²³ Dipak Gyawali, "Nepal-India Water Resource Relations" in *Power and Negotiation* by I. William Zartman and Jeffrey Z. Rubin, p. 130.

run their business/works in Nepal. So do hundreds of thousands of Nepalese people in India. Moreover, there are over forty thousand Nepalese citizens in Indian army, who have contributed to a great extent not only in strengthening socio-cultural ties but also in maintaining close relationship between the two countries.

India has always thought of Nepal as a country under its sphere of influence. Even after its independence in 1947, the big brotherly and hegemonic attitude of India vis-à-vis Nepal did not change. All the treaties between India and Nepal, the behaviours shown by Indian leaders from time to time, the Indian treatment of Nepal and the Nepalese people on different occasions, the position India has taken on Nepal and the Indian 'interest' in Nepal, that has resulted in regular and "embarrassing" interference in Nepal's internal affairs, testify to this fact. The statement of Jawaharlal Nehru, the first prime Minister of independent India, that India's security frontiers extend up to the Himalayas (incorporating Nepal into its security umbrella) is not a new thing. Indian epics and very old scriptures state that the area of "Bharatvarsha" i. e. the Indian subcontinent, extends from the Himalayas up to the Indian Ocean. This psyche prevails even today. Many Indian writers have lamented Nepal's quest for independence, its efforts for diversification of its political and economic relations, and its expansion of diplomatic relations, especially after 1950s.²⁴ This attitude remains not only among Indian scholars, but is very much reflected in the actions of successive Indian Governments.

The independence of India had also direct bearing on Nepal's politics. Nepal, until late 1950s, was ruled by Rana oligarchy, which was supported by British India. After India's independence, the Rana rule in Nepal also crumbled, and in 1951, democracy appeared in Nepal for the first time in its history. But, before the advent of democracy, India took benefit from Nepal's political instability and compelled the last Rana Prime Minister, Mohan Shumsher, to conclude the 1950 Treaty of Peace and Friendship. The Treaty is rather one-sided, in favour of India, and has imposed impractical and now redundant provisions. It was a continuation of India's efforts to conclude such treaties with its small neighbours.²⁵ With the same spirit, India also got Nepal's approval to conclude a treaty on management of training and supplies to Nepal army in 1965, which established Indian monopoly over the maintenance and management of Nepal army. However, this agreement has practically been sent into oblivion by both sides.²⁶ In the political history of Nepal, the period after 1950s to 1980s is marked by Nepal's quest for more independence and expansion of foreign relations. During this period, Nepal established diplomatic relations with China, became a member of the UN, established diplomatic relations with a large number of countries and became active member of many international organisations. Nepal also became non-permanent member of UN Security Council twice: in 1968-70 and 1987-89, and played active role in other international forums, including praiseworthy contribution to UN peacekeeping.

²⁴ There are numerous examples of this attitude; but a book by L. P. Shrivastava, (*Nepal at the Crossroads*, New Delhi: Allied Publishers Ltd., 1996) gives a unique picture of such mentality.

²⁵ In 1949, India had concluded such a treaty with Bhutan, which, inter alia, required Bhutan to be "guided by the advice of the Government of India in regard to its external relations" (Article 2 of the Treaty). For the text of the treaty, see *Dynamics of Foreign Policy and Law* by Dr. Surya Subedi.

²⁶ The conclusion of water treaties (Koshi and Gandak agreements) in 1954 and 1959, respectively, have been dealt with separately in later chapters. Therefore, they have not been mentioned here.

In the web and flow of Indo-Nepal relations, the 1980s witnessed another upheaval. In 1987, Nepal clandestinely imported arms from China, which later came to the knowledge of India. India, on its turn, refused to renew trade and transit treaty with Nepal, which practically imposed economic sanction on Nepal, creating hue and cry due to lack of supplies of essential goods. This tactics of India also helped the political agitation of Nepal's political parties, which had initiated movement against the party-less Panchayat regime. Ultimately, the King was compelled to introduce multi-party system in Nepal. While the movement was going on in Nepal, India secretly proposed a treaty with Nepal, which, if it were accepted, could impose a limit on Nepal's sovereignty and formally bring Nepal well into Indian domination.²⁷

As always, India played important role during the people's movement in 1988-90. After the fall of the party-less Panchayat system, democracy was introduced in Nepal in 1990, with the promulgation of the democratic constitution in November 1990. Following the reinstatement of democracy, India continued to assist Nepal in its socio-economic development, and also to influence the power centres of the day. It was in the 1990s that India and Nepal concluded the Tanakpur Barrage Treaty (in 1991) and the Mahakali Treaty (in 1996)²⁸.

In 1996, the Communist Party of Nepal-Maoist, which is popularly known as the Maoist Party, started an armed struggle. India, in the initial years, kept dubious silence about the Maoist movement in Nepal.²⁹ Later, however, some states of India also became victim to Maoist movement. It compelled India to speak against Maoist movement in Nepal, declaring Nepalese Maoists terrorists. Again, King Gyanendra's move of 1 February 2005, in which he sacked popularly elected Prime Minister and took the reign of power in his own hands, further alienated India. India, first, tried to woo the King, but the latter refused to tread on the path of Indian advice. This further distanced India from the King. As the Nepalese king also refused to work either with the established democratic forces like the Nepali Congress and the Communist party of Nepal-United Marxist Leninist³⁰, or with the Maoists party, which was running armed struggle from the jungles, the King got isolated within the country and beyond as well. The King's isolation and alienation helped bring the political parties together, which ran joint movement against the King's dictatorship and succeeded in throwing away the King's rule, and ultimately the monarchy itself. During all these developments, India played supportive role in favour of the parties, though it, at times, also wanted to negotiate with the King to make him accept its advice. Not only the Indian government but also major political parties in India and people in general supported Nepal's struggle against the King's dictatorial rule. It gave moral and material support to the political parties in Nepal.

²⁷ This treaty, which is divided into 8 parts, tries to reinforce the validity of 1950 Treaty, which remained "the cornerstone of Indo-Nepal relations" (Preamble to the treaty). In the field of defence, the Indian draft of the treaty provides that Nepal shall "consult and enter into suitable protocols with the Government of India concerning the acquisition by Nepal of arms, ammunition and other materials and equipment necessary for the security of Nepal"(Article 1 of Part 2); and that Nepal "agrees not to enter into any arrangements concerning the matters mentioned in Articles 1 to 3 ... with any other state or organization without prior consultation with the Government of India" (Article IV of part II).

²⁸ These treaties have been discussed in greater details in the later chapter; and therefore, have not been dealt with in detail here.

²⁹ Some have, however, argued that initially, India secretly assisted the Maoists.

³⁰ All the open parties came together under the name of Seven Party Alliance (SPA)

India, historically, is understood to have supported two-pillar system in Nepal: supporting monarchy and democracy as well. It is evident from the very beginning, and especially after 1950. Towards the end of the popular movement-2 of Nepal, in 2005-6, India tried to convince the agitating political parties to agree to the King's offer to appoint a Prime Minister of the parties' choice, and to save the monarchy. This time, Nepal's political movement went beyond India's wishes and the political leaders refused to accept the King's offer. India showed diplomatic skills by announcing that it supported the wishes of the Nepalese people.

After the abolition of the monarchy and the elections for the Constitution Assembly in Nepal, things have grown murkier for India. From the Constituent Assembly elections, the Maoist Party emerged as the single largest party, and its leader, Pushpa Kamal Dahal-Prachanda, became Prime Minister. This result was a very big and unexpected surprise for not only other political parties but also for the Maoists themselves. In the beginning, India seemed to have supported the Maoist-led coalition government. But, gradually, India felt that Prachanda was getting too close to China, at the cost of Nepal's relations with India. Prachanda visited China before visiting India; and there was a flood of visits, from both China and India. What Prachanda did was not against Nepal's national interest. In fact Nepal had always remained too close to, and dominated by, India. Prachanda's steps were steps in the right direction, which were directed towards maintaining a balanced relation with both China and India. Prachanda, or the Maoist party for that matter, failed to explain these steps in appropriate terms. Finally, following petty political wrangling, Prachanda had to step down. A new coalition has been forged under the Prime Ministership of Mr. Madhav Kumar Nepal, a senior leader of the CPN-UML.

During all these developments, India played very active role in Nepal, which has been termed by a report of the International Crisis Group as "embarrassingly undisguised" intervention.³¹

The main problem in the relationship between India and Nepal is the difference in their approaches. India has since the very beginning been trying to treat Nepal as a country completely under the sphere of its influence. It has always endeavoured to maintain special and patronizing relationship with Nepal. On the other hand, Nepal since historical times has been trying to keep itself independent, if not away from India. As has been discussed above, its main emphasis has been on preserving its sovereignty and independence; and Nepal has always perceived that the challenge and danger to its independence, if any, may come from the south. It was because of this understanding that it has always tried to maintain a balanced relation between China and India, sometimes advocating equidistance and sometimes equi-proximity. The crux of the problem lies in India's efforts towards keeping Nepal under its influence and Nepal's willingness to stay out of it. No meeting point is visible between these two approaches.

Modern Nepal has made great strides politically and socially. It has established republican set up, and has seen many other changes. Nepal cannot keep itself out of the worldwide phenomena of

³¹ The International Crisis Group's report on Nepal, brought out on 13 August 2009, titled *Nepal's Future: In whose Hands*, states, "Its (India's) interventions have been embarrassingly undisguised, dragging the Indian foreign minister, foreign secretary and ambassador into low-level Kathmandu politicking. Meddling in Nepal's affairs is nothing new or surprising". See ICG Report, *Nepal's Future: In Whose Hands?* 13 August 2009, p. 18.

globalization, economic liberalization, political pluralism and the wave of democracy and human rights. This ever increasing awareness has made Nepalese people far more open, politically active, outward looking and vigilant. However, India is yet to comprehend and accept the sea-changes Nepal has undergone. It still looks at Nepal with its traditional eyes. S. D. Muni, one of India's recognised political analysts, says:

*India can no longer pursue its vital strategic and economic interests in this radically transformed Nepal on the basis of its old colonial policy mindset and bureaucratised traditional tools of diplomacy. It can no longer play the King against the Ranas; political parties against the King; one set of Koiralas against the other; and one political party against the other. The old chess-board politics of cultivating coterie and promoting cronies or pitting feudal, corporate and sectarian vested interests against one another would be grotesque and counter-productive.... policy initiatives from New Delhi towards Nepal have to go beyond the chess-board politics and address the emerging aspirations of the Nepalese people, by constructively engaging with the political forces and the leadership that represent these aspirations.*³²

Nepal has a legitimate right to take every possible measure to address its concern and interest towards preserving its sovereignty and independence. However, it has to take a moderate approach vis-à-vis India, and avoid equating nationalism with anti-Indianism. On the other hand, India needs to adjust its policy and position vis-à-vis Nepal as warranted by the changed context and in accordance with the aspirations of the Nepalese people. If both sides take realistic approaches, there would be no serious problem and misunderstanding between the two neighbours.

This Chapter gave a brief account of the relationship between India and Nepal, and showed how India has been playing active role in affairs in Nepal since historical times. The following Chapter attempts to discuss India-Nepal water relations in greater details.

³² S. D. Muni. 'Dealing with New Nepal', *The Hindu*, 15 September 2008.

CHAPTER FIVE OVERVIEW OF INDIA-NEPAL WATER RELATIONS

Abstract

India-Nepal water relations can be studied under three timelines: before 1947, between 1947 and 1990, and after 1990. Political developments in both countries have affected cooperation on water resources. Before 1947, i. e. before India's independence, the only agreement signed was the Sharada Barrage agreement of 1920. The period between 1947 (after India's independence) and 1990 is very important because the major and controversial water treaties were signed during this period. The Koshi Agreement was signed in 1954 and the Gandak agreement was signed in 1959. King Mahendra tried to develop Nepal's hydropower on its own or with involvement of other countries. India was not happy with this, and Karnali project could not be materialized. The Tanakpur project was unilaterally initiated by India in 1983, and was concluded in 1991. Nepal regained democracy in 1990. The two countries concluded the Mahakali Treaty in 1996. Perhaps due to past experiences, democratic set-up, public awareness and pressure, and vibrant civil society, the 1996 Treaty is more balanced and upholds the principle of equality.

The history of India-Nepal water relations mostly is a history of unequal and one-sided agreements marked by India's high-handedness and power politics, and Nepal's ignorance and naivety. These trends have been continuing ever since independent India and Nepal started engagement in the area of water resources. It needs also be mentioned here that water relations between India and Nepal during the periods of British rule were not one-sided. British India had paid regards to Nepal's sovereignty and rights.

India-Nepal water relations can be studied under three broad headings: a) past experience, covering the period up to 1947; b) From 1947 to 1990, and c) Visible trends after 1990. Based on the overview of these three periods, a possible future scenario can also be projected.

Major India-Nepal Water Treaties

<i>S. N.</i>	<i>Treaties</i>	<i>Date of Conclusion</i>	<i>Remarks</i>
1	Agreement on Sharada Barrage	Proposed by British India on 23 August 1920, and replied back by Nepal on 21 October 1920.	Concluded in the form of an Exchange of Letters, and incorporated in the Mahakali Treaty of 1996.
2	Koshi Treaty	25 April 1954	Revised on 19 December 1966.
3	Agreement on the Gandak Irrigation and Power Project	4 December 1959	Revised on 30 April 1964.
4	Tanakpur Agreement	6 December 1991	Incorporated in the Mahakali Treaty of 1996.
5	Mahakali Treaty (including Sharada Barrage, Tanakpur Barrage and Pancheshwar Project)	12 February 1996	The Treaty has been ratified but the Detailed Project Report is yet to be prepared.

a) Period up to 1947

India and Nepal have been sharing waters ever since their existence. People of one country have been visiting the other country for pilgrimage, the sites basically located by the sides of rivers. Pashupati, located on the banks of Bagmati River, Barahachhetra on the bank of Koshi River, and Devghat on the bank of Narayani River are some of the places in Nepal which are pilgrimage sites also for Indian nationals. Similarly, Rishikesh, Haridwar, Banaras (Varanasi), and Prayag (Allahabad), all on the banks of the Ganga (Ganges) River, and Gangotri and Yamunotri, the origins of the Ganga and Yamuna, are among the most popular pilgrimage sites in India. People of both countries aspire to take a dip in these rivers, and consider them as gateways to the heaven.

Official relationship between India and Nepal in the area of water resources can be traced back to 1874 when the two countries reached understanding on three *sagars* (ponds) in Nepalese territory (Jamuwa, Siswa and Marthi, in Pehlimaljkhanda, in Kapilvastu district in present-day Nepal). From a letter written by Dr. Y. Racy, Commissioner of Gorakhpur, to the British Resident in Nepal on 14 May 1898, it can be understood that India and Nepal had reached an understanding in 1874 on the level of silt in these *sagars*, and had exchanged letters. This communication is considered the first official communication between India and Nepal in this area. Interestingly, Dr. Racy's letter to the British Resident in Nepal refers this issue as an "international boundary issue".¹

Dr. Racy's letter was in response to the Resident's letter of 5 May 1898 regarding the levels of silt in the three *sagars*. It is clear from the correspondence that, in June 1897, an agreement was concluded between the two sides at local level. That agreement was forwarded to Nepal Durbar, which made some corrections on the levels of silt mentioned in it. The Resident forwarded the Durbar's corrections to the Commissioner, who, in his letter of 14 May 1998, states that the corrections made by the Durbar were in accordance with the levels agreed upon in 1874.²

The Koshi River, which flows into India from Nepal, has always remained a source of trouble for Northern India, especially the Bihar State. In view of the trouble it keeps creating, it is known also as the "sorrow of Bihar". Officials of the British India Government also were concerned about the trouble the Koshi created in northern India. Therefore, British officials used to visit Barahachhetra area of Nepal from time to time to gauge the flow of the Koshi. There are references to show that many British surveyors visited the area, surveyed the flow of the River, and kept records. Major Rennel was the first person to survey the shifting nature of the Koshi, in 1779. He was followed by James Ferguson, who did the survey in 1863. A report of the oscillation of the Koshi was prepared and submitted to the Indian Government by FA Shilling Field in 1893 which stated that "the bed of the Koshi oscillates over a vast tract of the country from the Brahmaputra to near the mouth of the Gandak, the oscillation being repeated at long interval of times..³ It drew the attention of the British Government towards the necessity of constructing an embankment to tame the Koshi. However, in 1941, Sir C. Inglis, Director of the Central Water and Hydro-dynamics Research in

¹ The letter from Dr. Y. Racy, dated 14 May 1898, has mentioned its File Heading as "Boundary dispute between Nepal and British Territory". See, Dr. Dwarika N. Dhungel and Shanta B. Pun, *The Nepal-India Water Relationship: Challenges* (Springer Science + Business Media B. V. 2009), Annex-2.

² In the letter, Dr. Racy writes, " ... the basis of the decision arrived at in June 1897 was the maintenance of the existing levels which were admitted to be those of 1874 when the former decision was arrived at between the two Government(s) as to those reservoirs". *ibid*.

³ GoInd, quoted by Dr. Dwarika N. Dhungel in *The Nepal-India Water Resources: Challenges*, p. 12.

Poona, identified the problem of Koshi as being due to excess discharge of sand in the river that led to the oscillation, and suggested that construction of a barrage would be more effective than embanking the river. It was the basis for the decision by British India Government, and later the Government of India, to construct a barrage around Chatara area in Nepal. There are also records that, during the Prime Ministership of BirShumsherin Nepal, the British India Government had requested Nepal to allow the construction of a barrage in Chatara area. BirShumsher took four years to respond to the request, and finally communicated his acceptance of the request to the British India Government in 1897.⁴The Nepalese side seemed not only ready but also willing to construct the barrage. BirShumsher not only accepted the request for the construction of the barrage, but also offered food for the labourers. His main concern was that no damage should be done to the Chatara temple and the arable land in Saptari district. Although it did not materialize then, it is not difficult to understand that the Koshi project was the fruition of this idea.

In addition to such studies and communications, the concrete example of Nepal-British India cooperation in the area of water resources is the 1920 agreement on the Sharada Barrage. This Barrage, too has a long history. The United Province Government had proposed to utilize the water of Sharada River for irrigation as early as 1869. However, the people of Avad objected to the idea fearing the epidemic of malaria. Again, in 1901, the then Vice Roy Lord Curzon, reintroduced the idea. This time he took a different approach saying that the water of the Sharada River was going wasted, and, if the local people did not want to utilize it, the water would be taken to Punjab through the Ganga Canal. This time, the people said that they did not want their water to be taken away and used elsewhere, and did not oppose the construction of the Barrage.

After this, the process of the construction of the Barrage started. British Government had already decided to construct the Barrage at Brahmadevmandi within Nepalese territory. Available records show that the two governments started official communication as early as 1909, which also included the matter relating to boundary delineation.⁵The Nepalese Government had in 1910 "granted permission for the survey of the Sharada River channel in connection with the Sharada-Ganges-Jamna Feeder Project from Brahmadeomandi to a point one mile below Banbasa ferry".⁶It may be noted that initially, the British India Government had conceived of the project only for irrigation. The original project, which was finalized in 1911, had proposed that the headworks would be located in the British territory, at Solano Goth. But, after the big floods of 1910, the river "showed signs of swinging over towards the Nepal bank below Tanakpur and in the last four years (before 1916) the cold weather stream has completely changed its course, until the whole winter supply is now in the Nepal side".⁷Therefore, in 1916, the British Resident wrote to Nepalese Prime Minister that the swinging of the river necessitated tying of the weir of the riverbed with higher ground in the Nepalese side by an afflux bund. He also proposed "to locate the weir across the eastern channel of the Sharada river at Banbasa ferry about a mile below Solani Goth" because,

⁴Devendra Mishra, 1990.

⁵ Ajay Dixit, *Water Journey of two Neighbours* (in Nepali), (Kathmandu: Actionaid, Nepal and Nepal Water Conservation Foundation, 2008), p. 14.

⁶ Letter from British Resident J. Manners Smith to Maharaja Chandra Shumsher JB Rana dated 3 May 1916 (Ministry of Water Resources, Government of Nepal, Kathmandu).

⁷*Ibid*

the Resident stated, "it is here that the river is narrowest".⁸The Resident also requested Nepalese Prime Minister to hand over to India a strip of land on the east side of the river, i. e. in the Nepalese territory, "in order to ensure proper control over the river".⁹ The two sides continued communication, and on 23 August 1920, Nepalese Prime Minister, Chandra Shumsher JB Rana, wrote to Colonel Kennion, the British Resident in Nepal, agreeing to the project. He also informed the Resident that the Nepalese Government had issued orders to the local authorities to allow British surveyors into Nepal. In the letter, the Nepalese Prime Minister also proposed that-

- i. the Nepalese Government will have a right for a supply of 460 cusecs of water, and if available, up to 1000 cusecs, in the Kharif (15 May to 15 October) and 150 cusecs in the Rabi (15 October to 15 May), and that the canal head would be alternately opened and closed for ten days at a time running 300 cusecs when open in the Rabi.
- ii. in order to give those supplies, all necessary works would be done by the by the Government of India "at their own expense on the understanding that they shall retain full and entire control of the work with this undertaking that they shall supply to Nepal the quantity of water agree to free of any charge".¹⁰
- iii. the Nepal Government would transfer the land necessary for the construction and maintenance of the canal work, and that it would receive land equal in area from the British Government.

The British India Government agreed to this proposal, and the British Resident replied to the Nepalese Prime Minister on 21 October 1920 confirming their acceptance of the proposal and also clarifying some points. According to British India, the total land necessary for project would be 4093.88 acres in area, and the British Government would provide Nepal with land equal in area in Lucknow and Faizabad districts.

This exchange of letters constituted the 1920 Sharada Barrage agreement.

The British India Government started the construction of the Barrage in 1924 and completed it in 1928. Ever since, it has been using the canal to irrigate land in Uttar Pradesh, and also utilizing 40 MW of electricity generated from Lohia powerhouse. However, it took Nepal many decades to utilize the water it was entitled to under the agreement for irrigation. It was only in 1997-98 that it completed the Mahakali irrigation system under the World Bank assistance.

There are no records of any other projects and cooperation between Nepal and British India after the Sharada Barrage. While revisiting Nepal-India water relations during the British era, a few points stand out prominently. First, Nepalese rulers considered water issues with India as foreign policy issues, and emphasized on the benefits for the Nepalese people. It was therefore that they took four years to agree on the British proposal of 1916, took the issue seriously, and agreed to it in 1920 only when the British Government agreed to their demands of water and land in exchange.

⁸*Ibid*

⁹*Ibid*

¹⁰ Letter of Prime Minister of Nepal Maharaja Sir Chandra Shumshere Jung Bahadur Rana to Colonel Kennion, dated 23 August 1920 (source: Ministry of Water Resources, Government of Nepal, Kathmandu.)

Second, the British rulers never showed highhandedness, and waited for Nepal's response. It was only after the agreement in 1920 that they started the construction of Sharada Barrage. During this period, the Nepalese side did not have a feeling that they were cheated or dealt with inappropriately. Third, British Government also rendered technical help to Nepal in the construction of other projects such as the Chandra Canal in Trijugakhola and Banganga project in western Terai. Though the Nepal side had paid for the British engineer, his work was praiseworthy. Mr. Karnadhoj Adhikari, former water resources secretary and Nepal's Ambassador to India feels that Nepal India relations during the British rule were exemplary.¹¹

b) The Period between 1947 and 1990

This period is a very important period in the history of India-Nepal water resource relationship. This period carries special significance in the fact that India became independent from British colonial rule in August 1947; Nepal freed itself from the family rule of the Ranas in 1950. The true face of Indian rulers came to light in this period, and Nepal's aspirations and preference also became visible during this period. It was during this period that the most controversial treaties between India and Nepal in the field of water resources were concluded. They include The Koshi Agreement of 1954 and the Gandak Agreement of 1959. It may also be noted here that the background of the controversial Tanakpur Barrage Treaty was also set during this period.

The Koshi Agreement

The Koshi River has always remained a problem for Nepal and Bihar State of India. It has swept large areas of the both country during rainy season. Every year, people along the banks of the Koshi are frightened from the beginning of rainy season, and thousands, and sometimes hundreds of thousands, are displaced due to floods in the river. It was because of this problem that the British used to call Koshi "the sorrow of Bihar".

Among the main problems of the Koshi is the oscillation of the river. A study showed that over a period of 220 years, i. e. from 1730 to 1950, the river shifted a distance of 115 kilometres towards the west, from Purnia in Bihar to the location of the present embankment. Indian side started making efforts to tame the river since as early as the beginning of the 19th century. However, their efforts could not materialize at that time due to not so good relations between India and Nepal.¹² In 1827, the Indian Government constituted a group to study the nature of floods in the river and submit a report on how to control it. In 1891, the British India Government wrote to the Nepalese Government requesting the latter for their approval to construct an embankment to check the swinging nature of the Koshi at a cost of Rs. 15 thousand. Nepalese Prime Minister, Bir Shumsher, approved of the project expecting that it would help Nepal also. But, the terrible floods that year prevented the realization of the project. With the passage of time, two thoughts developed in India as to how to control the river: by an embankment or a barrage. A conference was organized in Patna on 24 March 1897 to discuss the problem of floods but could not reach an agreement. In another such conference held in Patna in 1937, Bihar's Chief Engineer G. F Hall presented his view that embankment cannot solve the problem of floods. Similar views were expressed also during a conference in Orissa in the early 1930s. Discussions were held at other places also. However, for various reasons, the Government could not reach any decision, though there was a consensus among all stakeholders that Koshi's floods need to be controlled.

¹¹ See Dr. Dhungel, *The Nepal India Water Resources Relationship: Challenges*, pp 13-15.

¹² Ajay Dixit, *Water Journey of two Neighbours*, p. 20

During a conference on 6 April 1947 held in Nirmali in Northern Bihar, India's Energy Minister C. H. Bhabha, proposed to construct a 229 metres high concrete dam at Barahachhetra in Nepalese territory. He stated that the dam would control floods, generate 1,200 MW of electricity and irrigate 1.21 hectares of land in Bihar. It would be completed in ten years at a cost of Rs. 100 million. Still, the Government could not reach any decision.

Even after India's independence from British rule in 1947, the programme to control the Koshi River continued. A committee was constituted under the chairmanship of Consultant Engineer of West Bengal Government in June 1951 to study the construction of a high dam and the possible alternatives. The committee also recommended to construction of a dam. Again for many reasons, including high cost, lack of ready market for the produced electricity, and lack of technical knowhow about the high concrete dams, the recommendation could not be materialized.

Finally, nature provided the final push for the project. In 1953, there came a big flood in Bihar. The Government constituted a committee of experts to suggest ways and means to control the recurring floods. India's Prime Minister, Mr. Jawaharlal Nehru, undertook an aerial survey of the flood-affected areas on 31 October and 1 November. He was very much disturbed by the sufferings of the people, and insisted that immediate measures had to be taken. The floods that year were not caused by the Koshi, but the logic prevailed that the Koshi had to be tamed by constructing embankments. In December 1953, the Indian parliament (Lok Sabha) approved the construction of the Koshi Barrage and embankments.

It is remarkable here that the Indian Government had not consulted the Nepalese Government on the project. Later, when it was approved by the parliament, the Indian side sent a team to Nepal to conclude the agreement.¹³ The team headed by Minister, Mr. Guljarila Nanda, reached Nepal on 24 April 1954.¹⁴ The Nepalese team was led by the Prime Minister, Mr. Matrika Prasad Koirala, himself. The teams negotiated the agreement for two days, and reached an agreement on 25 April.¹⁵

Soon after its conclusion, the Koshi Agreement was severely criticized in Nepal as being one-sided and in favour of India. The critics asserted that the project was not beneficial to Nepal in any manner, and that it granted extraterritorial rights to India for an indefinite period without adequate compensation to Nepal. They also asserted that India would get undue benefit in irrigation as well as in electricity. The resentment was so wide and severe that India agreed to revise the agreement.

¹³ There was no representation from Nepal in the discussions on controlling the Koshi. However, the Indian documents on the project mentioned that, as the proposed site, Barahachhetra, was located in Nepalese territory, the neighbouring country needed to be consulted. See for details, Ajay Dixit, *Water Journey of two Neighbours* p. 25.

¹⁴ The Indian side was so confident, and undermined the Nepalese side, that it had planned to reach Kathmandu on 24 April, conclude the agreement the same day, and come back. See as above for details.

¹⁵ The Nepalese Prime Minister, Mr. Matrika Prasad Koirala, wrote a long letter to Mr. Jawaharlal Nehru on 30 April 1954. Paragraph 3 of the letter mentions the agreement on the Koshi. Mr. Koirala writes: "Mr. Guljarilal Nanda was here and I am really glad the Koshi Agreement has been signed between our two Governments very cordially and amicably. As usual the parties in opposition are trying to paint this agreement as black as possible. The truth, however, will sustain and I am confident the people will not seriously take all their malicious propaganda." See Matrika Prasad Koirala, *A Role in a Revolution* (Lalitpur, Nepal: JagadambaPrakashan, 2008), p. 292.

Subsequently, it was extensively revised in 1966. The preamble of the revised agreement states that "Nepal had suggested revision of the said (1954) Agreement in order to meet the requirements of the changed circumstances" and that India had agreed to the revision "with a view to maintaining friendship and good relation subsisting between Nepal and India".¹⁶

The revised Agreement has rectified many of the criticisms. The general layout of the project was changed before signing the Agreement. In the agreement, it was agreed that the land in which the Nepal Link Bund was situated would be surrendered to Nepal and that any construction and other undertakings by India would be carried out in consultation with the Government of Nepal. The revision also delineated the responsibilities of each Government.

Nepal's King Mahendra laid the foundation stone of the Koshi project on 30 April 1959, which was attended by Indian Prime Minister as well. The project was completed in about four years' time, and was inaugurated by King Mahendra on 24 April 1965.

The Koshi Barrage (upper) and the Gandak Barrage (lower), Photo by the Kantipur.



¹⁶Preamble to the 1966 Agreement.

The Gandak¹⁷ Treaty

Nepal and India signed the Gandak Agreement on 4 December 1959. However, as in the case of the Koshi Agreement, the Gandak project has also a long history. The British Government had made up its mind to use the water of the Gandak River for irrigation as early as 1871-72.¹⁸ In 1896, Bihar was struck by an acute famine. The British Government initiated the construction of the Triveni canal as relief work spending millions of rupees. The construction took a long time, and was completed only in 1909. With the extensions added in 1960, the canal can now irrigate 400,000 acres of eastern Bihar. The Bihar Government also wanted to build similar canal to irrigate the western side of the state. In 1947, the then Agriculture and Food Minister of the Government of India, Dr. Rajendra Prasad, wrote to Bihar Government advising the latter to "explore the possibility of building canals from the Gandak for irrigating larger portions of Saran, Champaran and Muzaffarpur districts in Bihar, Deoria and Gorakhpur districts in U. P. and parts of Nepal".¹⁹ Finally, after about three years of negotiations, the two governments signed the Gandak Treaty on 4 December 1959. The treaty was signed by Mr. Bhagwan Sahay, Ambassador of India in Nepal, and Mr. Subarna Shamshere, Deputy Prime Minister of Nepal, on behalf of India and Nepal, respectively. It is worth noting here that the treaty was concluded at a time when Nepal had a new and elected democratic regime, the government being led by the first elected Prime Minister of Nepal, Mr. B. P. Koirala.²⁰

As in previous occasion, the Gandak Treaty also faced criticism from opposition parties in Nepal, and was amended on 30 April 1964.

In accordance with the treaty, a barrage has been built at Bhaisalotan, on the reach of the Gandaki River, which forms the boundary between Nepal and India. Two canals have been constructed on either side of the barrage. In total, the canals irrigate 57,900 hectares of Nepalese and 1,850,000 hectares of Indian land. A powerhouse with an installed capacity of 15,000 kW of electricity has been built in Nepalese territory. It needs to be noted that the project was built by, and at the cost of, India. Nepal would get an aggregate maximum of 10,000 kW of electricity up to 60 per cent load factor at power factor not below 0.85. However, Nepal has to make payment for such electricity on the basis of the actual cost of production.

¹⁷The River is called Gandaki in Nepal and Gandak in India.

¹⁸Dhungel and Pun, p. 22; also Ajay Dixit, p. 29.

¹⁹D. N. Dhungel and S. B. Pun, p.22

²⁰ In his memoir (*Atmabrittanta*), Mr. Koirala says, "After I became Prime Minister, the main problem was that of the Gandak treaty. It was lingering for many years. I said, it might be finalized soon. I got it checked. I told the concerned Minister, perhaps it was Ganeshmanjee, it should not be done only with their consideration, I will consider its political aspect. I called some engineers and discussed it with them. While discussing with them, I said that I would have no objection if they (Indians) get more benefit without causing any harm to us. But our interests must be protected. Our main interests concerned with two things. One was water and the other was electricity. I was of the opinion that we should give them water only in excess of our requirement..... We approved the draft that had come from the other (Indian) side with amendments, our cabinet also approved it. Whether I did it in a hurry is another matter; I do not know whether I made a mistake or whether the advice I got was wrong. But, I take full responsibility of the Gandak Agreement. I do not say that so and so Minister did it or I did not know it; I talked about it and did it knowingly." See *Autobiography of Bishweshwar Prasad Koirala*, Compiled by Ganesh Raj Sharma (Lalitpur, Nepal: JagadambaPrakashan, 2055 (1998 AD)), pp 231-32.

Politics has always influenced water relations among states. Changes in a country's political set up affect the overall relationship between or among states. In Nepal's case also it was and is true. In Nepal, the family rule of the Ranas, which had begun in 1846 with the rise of Jung Bahadur Rana, came to an end in 1950. Due to Nepal's lack of experience, expertise and financial resources, coupled with existing internal weaknesses, no notable changes could be visible in the 1950s. It was this period that the two major agreements were signed between India and Nepal: the Koshi and the Gandak agreements. Mahendra became the king of Nepal in 1955, after the death of his rather weak father King Tribhuvan. King Mahendra was a person of a different nature. During his long rule of over seventeen years, he introduced many new systems, enthused new ideas and tried to lead Nepal into a modern era. He expanded Nepal's foreign relations by establishing diplomatic relations with many countries. He truly tried to diversify Nepal's international engagements and cooperation. This was reflected in case of Indo-Nepal water relations.

It has been mentioned above that King Mahendra laid the foundation stone of, and inaugurated the Koshi Barrage. The Gandak Agreement was concluded by a democratically elected government in which the king did not have much say. But, after King Mahendra took over the reign of the country in 1960, policy shifts were visible in many areas, including water relations. King Mahendra wanted and tried to involve other countries, especially the powerful ones, in the development of Nepal's water resources. His intention was to minimize India's monopoly in Nepal's water resource. After his death in 1972, his son King Birendra also seemed to follow his father's policy. Dr. Dwarikanath Dhungel has called this period, the period between 1966 and 1990, a period of "suspicion and misunderstanding".²¹ Though there were many proposals and counter-proposals, the main projects that were discussed and negotiated were the Karnali and the Pancheshwar multi-purpose projects, and the Rapti/Bhalubang and Jalkundi projects.

As the Koshi and the Gandak agreements were concluded with India, King Mahendra preferred to take up the project on the Karnali River by Nepal itself. In 1960, when he was on a visit to the United States, he took up this matter with President Dwight D Eisenhower, and succeeded in getting Mr. Eisenhower's support to channelize one million US Dollars through UNDP to undertake feasibility study of the project. A Japanese firm, Nippon Koei, undertook the study, and submitted its report in 1966. This study was followed by other studies by Norwegian, Canadian and US firms. Initially, the project was supposed to generate 3600-4500 MW of electricity. Later, a preliminary report prepared by the Himalayan Power Consultants under the Ministry of Water Resources of Nepal "settled the site and proposed raising the height of the dam to generate 10,800 MW of hydropower and provide irrigation facilities for 191,000 ha net of land in Nepal and over 3,000,000 ha in India".²²

Nepal had tried to get India involved in Karnali project from as early as 1967. During the visit to Nepal by India's Deputy Prime Minister, Mr. Morarji Desai in October 1967, Nepal proposed cooperation with India in the development of the project. Mr. Desai stated that India would arrange for an "early technical appraisal of the ... project from the point of view of determining India's interest in it".²³ Again, King Mahendra took up this issue with India's President, Dr. Zakir Hussain.

²¹ D. N. Dhungel and S. B. Pun, p. 30.

²² Report available at the Ministry of Water Resources of Nepal, 1989

²³ Avtar Singh Bhasin, *Nepal's Relations with India and China: Documents 1947-92* (Delhi: Siba Exim Pvt. Ltd., 1994).

India reiterated its readiness to cooperate if it were found to be in mutual interest. King Mahendra's son, King Birendra also continued his efforts to get India involved in the project. In 1973, during a visit to Nepal by DP Dhar, India's Minister for Planning, this matter was officially taken up. India, in response, agreed to purchase electricity in excess of Nepal's use, but put forth a qualification that India would like to be fully associated with the formulation of the project. This qualification was somehow not in line with Nepal's initial plan to develop the project by itself. However, Nepal's main concern was to get the project going. In an interview to Indian journalists on 1 March 1974, King Birendra expressed his confidence that "the (bitter) experiences of the Koshi and Gandak projects will not come in the way of execution of the Karnali project".²⁴ The response to this willingness came in the form of a statement by India's External Affairs Minister, Y B Chavan, to India's Parliament (Lok Sabha) on 27 January 1977, in which he said, "In particular, I would like to mention that both sides agreed to continue the work on the Karnali Project as under the existing arrangement and to undertake, at the earliest possible, the joint investigation of the Pancheshwar Dam Project and the Rapti Flood Control Project".²⁵

As has been mentioned above, India was not happy with Nepal's 'independent' move in developing its water resources, and more so the involvement of third parties. Therefore, from the early years, India had started playing double role. On one hand, India had been saying that it supports the development of Karnali project, and also agreed to purchase the surplus electricity. On the other hand, it had started proposing to initiate another project, the Pancheshwar multi-purpose project. It was therefore that India got this project mentioned in the joint statements issued after the visit to Nepal by Mr. D. P. Dhar in 1973 and the one issued after the visit of Indian Prime Minister, Mr. Morarji Desai, in 1977. Similarly, the External Affairs Minister's statement in the Lok Sabha also categorically mentioned the Pancheshwar project.

India's interest in Pancheshwar project is said to have dated back to 1960s. When India's Water Resources Minister, Mr. K. L. Rao's visit to Nepal in 1971, he submitted a report to Nepalese officials. King Mahendra is said to have outrightly rejected the proposal, realizing that this project, if taken up, would put the Karnali project in backburner. After his death in 1972, King Birendra seems to have changed his father's position by agreeing to consider India's proposal on Pancheshwar while at the same time moving ahead with the Karnali project. But, for a small and poor country like Nepal, taking up two mega projects simultaneously was quite impossible for various reasons, including financial constraints. As could be visualized even then in the 1970s, the fate of the Karnali continued to remain uncertain.

India and Nepal, however, made, or seemed to make, some progress in the Karnali project. They agreed, in 1977, to constitute the Commission on Karnali at the Water Resources Secretary's level and the Karnali Coordination Committee at the technical level. It is difficult to ascertain why the two governments agreed to constitute these committees, but could not make real progress. According to B. G. Verghese, Indian side understood the Karnali project as "Nepal's mistrust of India after the raw deal it feels it got on the Koshi and Gandak barrage agreements, particularly the former, have led it to keep out Indian consultancy and design skills and instead to opt, indeed

²⁴*Ibid*

²⁵ Quoted by D. N. Dhungel and S. B. Pun, p. 34

to insist, on engaging international consultants."²⁶ On Indian side, "nobody had the vision or the will to seize the opportunity. India also exhibited an excessive antagonism towards all international consultants or even international interest in the belief that this would necessarily load the dice against it if for no other reason than to favour the smaller country or to foster the sinister designs of the 'foreign hand'".²⁷ Mr. Verghese also mentions that, until the mid-eighties, Indian Planning Commission had never looked at the Himalayan potential in Nepal and Bhutan in terms of long term energy planning. On the other hand, there are people in Nepal who feel that India "ensured that Karnali fizzled out into endless meetings of the Karnali Coordinating Committee and the policy related Committee on Karnali at the Secretary level."²⁸ As has been seen, Nepal and India did not make any notable development and progress in the period between 1960 and 1990. This period was marked by Nepal's efforts towards developing its own projects and getting other actors involved, and India's willingness to maintain its monopoly in Nepal's waters and keeping other parties out of the scene.

The Period After 1990

The year 1990 and the period after that are very important in Nepal-India water relations. There was a people's movement in Nepal in 1989-90, especially against the undemocratic nature of the "party-less" Panchayat system. Bowing before the people's will and pressure, Nepal's King Birendra announced the removal of the phrase "partyless" from Nepal's constitution on 8 April 1990. It is a fact that Indian leaders greatly encouraged and helped the agitating political parties in Nepal. The movement would not have achieved its objective but for India's support.

India also showed its another face during the political instability in Nepal in 1989-90. It has been demonstrated time and again that India wanted to benefit from Nepal's internal instability and problems. This time also India secretly provided Nepal a draft of a treaty with an indication that it would support the King in crushing the movement and save his rule. Article IV of Part VI of the draft treaty, which deals with economic, industrial and water resources cooperation, provides, "The Contracting Parties agree to jointly plan, construct, and manage projects of mutual benefit. In this regard, *the involvement of a third party, where felt to be necessary and in the common interest, shall be subject to mutual consent.*"²⁹ (emphasis added). It again shows India's real motive vis-à-vis the affairs in Nepal. King Birendra, however, preferred to bow down before the demands of his people rather than before Indian tactics. Consequently, he agreed to loosen his grip on power and to reinstate multiparty democracy with constitutional monarchy. An interim government was formed under the Prime Ministership of Mr. Krishna Prasad Bhattarai, which was assigned two major tasks: draft a new constitution and hold elections according to the new constitution. Mr. Bhattarai visited India in June 1990. Relations between Nepal and India returned to normal after Mr. Bhattarai's visit, but with some serious implications for Nepal. The joint communiqué issued at the conclusion of his visit referred to Nepal's rivers as "common rivers", and emphasized the need to expedite their development. Some in Nepal have called this Joint Communiqué another

²⁶ B. G. Verghese, *Waters of Hope: Facing New Challenges in Himalaya-Ganga Cooperation* (New Delhi: India Research Press, 2007), p. 345.

²⁷ *Ibid.*

²⁸ Shanta B. Pun, 2006, as quoted by Dr. D. N. Dhungel in D. N. Dhungel and S. B. Pun, p. 37.

²⁹ The draft available at Appendix XIX in Dr. Surya Subedi's book, *Dynamics of Foreign Policy and Law* (Oxford Printing Press, 2005), p. 256.

blunder in Nepal-India relations, after the 1950 Treaty of Peace and Friendship and the Koshi and the Gandak agreements of 1954 and 1959 respectively.³⁰

A new constitution was promulgated on 9 November 1990, which included many democratic provisions including multiparty democracy, constitutional monarchy, human rights, adult franchise, respect for world peace and international law. The deep-rooted suspicion among the Nepalese people about India's design to control Nepal's water resources was clearly visible in this constitution. Article 126 of this constitution required parliamentary ratification by a two-thirds majority, of, inter alia, treaties of "pervasive, serious and long-term nature" on sharing Nepal's natural resources.

The Tanakpur Episode

Many people believe that one of the main reasons for Nepal's weakness in water relations with India is lack of awareness and expertise. But, the Tanakpur issue demonstrates otherwise. Nepal and India concluded an agreement on Tanakpur in 1991, but this agreement, which was concluded fairly recently, shows Nepal's immaturity and lack of understanding of international law and national interest.

Though signed in 1991, Tanakpur Barrage has a history of about a decade. In 1983, the National Hydropower Corporation of India completed the technical study of the project for generating 120 MW of power from the Mahakali River near Tanakpur town in Nainital district in Uttar Pradesh. Initially the project planned to generate 120 MW of power and empty the tailwater into the Sharada Canal. The plant, thus, would use all the water of the river, and deprive Nepal of its share of water guaranteed by the Sharada Treaty of 1920. After Nepal raised its concern, the Indian Government agreed to redesign the project and release the water back into the Mahakali River. Deepak Gyawali and Ajay Dixit have opined that Nepal's excessive pre-occupation with the 402-MW Arun-3 project made Nepalese authorities "oblivious to what was happening at Tanakpur on the Mahakali".³¹

The construction of the barrage and powerhouse under the project completed in 1988. However, an afflux bund was necessary to tie the barrage to the high ground on the left bank in Nepal. Till now, India had not consulted Nepal about the project saying that "this was an Indian project on Indian territory and of no concern to Nepal"³². But, the requirement of tying the barrage to high ground in Nepal made it necessary for the Indian government to request Nepal for 577 metres of Nepali land to be used for this purpose. Nepal was not willing to accede to Indian request as it would submerge a considerable portion of its land. Moreover, the strained relations between Nepal and India during 1989-90, following the economic embargo imposed by India upon Nepal in March 1989, also complemented Nepal's unwillingness. Therefore, this matter got pended.

The fall of the party-less Panchayat system and the reinstatement of democracy in Nepal changed the situation. Relations between the two governments returned to normalcy. In 1991, a Nepalese team of experts recommended a variant that would cause least submergence, and also suggested to link the use of the land by India with additional irrigation facilities in Kanchanpur district and

³⁰ See Dr. Surya P. Subedi, *Dynamics of Foreign Policy and Law, a Study of Indo-Nepal Relations*), pp. 10-14.

³¹ "How Not to Do a South Asian Treaty", *Himal South Asian* (Kathmandu: April 2001).

³² *ibid*

construction of a highway on the Mahakali Barrage. Following the recommendation, the Nepalese Government authorized its negotiators to negotiate with Indian side within the parameters: least affect by the afflux bund, 1000 cusecs of water for irrigation and "some electricity" in return for the use of 577 metres of land by the Indian side.

Nepal's newly elected Prime Minister, Girija Prasad Koirala of Nepali Congress Party, visited India in 1991. Among other things, the Prime Ministerial visit included agreement with India on developing high dams in the Nepal Himalayas and to allow India to use 577 metres of Nepalese land for the Project. Nepal, in turn, would get 10 million units of electricity and 150 cusecs of water 'free of cost'. The agreement also included studies on high dams at Pancheshwar, KarnaliChisapani, Budhigandaki, and Saptakoshi. In Nepal, it gave birth to a debate whether the MoU needed to be ratified by the Parliament. The Prime Minister said that it was not a 'treaty', as referred to in the Constitution but an 'understanding between the two Governments. Therefore, the Prime Minister argued, there was no requirement for this MoU to be ratified by the Parliament. On the other hand, India had hastily started the construction of the bund even before the MoU was made public in Nepal.

In December 1999, a writ was filed in Nepal's Supreme Court seeking a decision of the Court that the MoU was a treaty, and required ratification by the Parliament. It developed into a very hot national issue and dominated national politics for months.

India's Prime Minister, Mr. Narasimha Rao visited Nepal in October 1992. Both sides renegotiated the MoU, and India agreed to increase the units of electricity to Nepal from 10 million to Nepal 20 million units, and both sides also agreed to disassociate Tanakpur from other future projects.

Nepal's Supreme Court decided on 15 December 1992 that the TanakpurMoU was in fact a 'treaty', and not an 'understanding' as the Government had been claiming, and therefore, it needed to be ratified by the Parliament. The Court left it to the Parliament itself to decide whether it needed to be ratified by the joint session of the Parliament or by a simple majority of the House of Representatives. Later, a commission formed by the Government, recommended that the MoU was not of pervasive, serious and long-term nature, and therefore, could be ratified by a simple majority of the parliament. However, due to inter- and intra-party factionalism, the MoU could not be ratified. The Koirala Government fell in July 1994.

Elections were held in November 1994 in which the Communist party of Nepal-United Marxist Leninist (CPN-UML) emerged as the single largest party in the House of Representative, and formed government on 9 December, headed by ManmohanAdhikari. This party had opposed to the Tanakpur Treaty. However, while in the Government, it proposed to "enter into comprehensive talks on the Mahakali River as a package" to deal with Tanakpur issue.³³ The UML Government also prepared a draft treaty on Mahakali River incorporating the Tanakpur Barrage, Sharada Canal and the Pancheshwar project, which was discussed during the visit to Prime Minister Adhikari to India in April 1995. However, the treaty could not be signed then. According to the plan, Nepal would get an increased quantum of water and electricity and a high storage dam, 315- meter high with 6480 MW of hydropower generating capacity- would be constructed at Pancheshwar, the

³³ Dr. D. N. Dhungel and S. B. Pun, p. 45

upstream of Tanakpur. Construction of this dam was also a matter of Indian interest, which had been pursuing since about two decades.

After nine months in power, the minority CPN-UML Government fell, and the "package deal" could not be materialized.

A coalition government headed by Nepali Congress leader SherBahadurDeuba was formed after the fall of CPN_UML Government. The new Government initiated talks with India in November 1995. Things moved forward in a positive manner.

An important development took place on 26 January 1996 when three major parties of Nepal (Nepali Congress, CPN-UML and RPP) signed a document called "National Consensus on the Use of the Mahakali River", which took the "package deal" proposed by UML-Government one step further. The document defined Nepal's interests and made specific provisions on Tanakpur Barrage, Sharada Canal and Pancheshwar Project. It said that Nepal would try to secure additional water (more than the existing 150 cusecs) and up to fifty per cent of electricity free of cost from the Tanakpur Barrage; India should supply water for irrigation to Nepal from Tanakpur Barrage in the event of non-operationalisation of Sharada Canal; and that, under Pancheshwar Project, establish equal capacity powerhouses on both sides and ensure equal utilisation of water to run the powerhouses; costs would be borne in proportion to the benefits from the project; apply the principle of maximum net benefit from projects on border rivers; and ensure to seek bilateral consensus on using the water of the Mahakali River. The document also provided for according priority to Nepal's needs in the utilization of water and also to analyse the available benefits in terms of electricity and energy, irrigation and flood control to both countries and bear the costs of the project in proportion to the benefits acquired.

The Mahakali Treaty

A day after the Consensus Document was signed by three major parties in Nepal, India's Minister of External Affairs, Mr. Pranab Mukherjee visited Nepal. The Foreign/External Affairs Ministers of Nepal and India initialed the "Treaty concerning the integrated Development of the Mahakali River, including Sharada Barrage, Tanakpur Barrage and Pancheshwar Project", popularly known as the Mahakali Treaty, on 29 January 1996. Again, during the visit to India by Prime Minister Deuba, the two Prime Ministers finally signed the Treaty on 12 February 1996. The Treaty is valid for seventy-five years.

On 17 February, Nepal and India signed an agreement on trading electric power under which, any governmental, semi-governmental or private enterprise of either country could develop hydropower sites, and buy/sell power to each other. It meant that both governments agreed to allow private sector to develop hydropower projects.

As the Mahakali Treaty was no doubt a treaty of pervasive, serious and long-term nature under the purview of Nepal's constitution, it had to be ratified by two thirds majority of a joint sitting of both Houses of Parliament. The serious debate among political parties surfaced in Nepal on the Treaty. Finally, it was ratified by Nepal's Parliament on 20 September 1996; and came into force from 5 June 1997 after both countries exchanged instruments of ratification. The debate in Nepal, especially in the left camp, was so serious that the CPN-UML broke between two parties in the aftermath of the Treaty's parliamentary ratification.

The Mahakali Treaty is very wide in its scope. It includes three components: on Sharada Barrage, Tanakpur Barrage and Pancheshwar Multipurpose Project, respectively. It also sets out principles to be followed while preparing detailed project report (DPR). It also provides for Mahakali River Commission. Besides, it also covers modalities for assessing benefits accruing from this project and bases for selling Nepal's surplus power to India. The Treaty recognizes Mahakali as the boundary river on major stretches, and sets out the principle of "equal partnership to define their obligations and corresponding rights and duties thereto with regard to the utilisation of the waters of the Mahakali River".³⁴

This chapter gave an overview of India-Nepal relations in the area of water resources. It was clear how politics and other domestic compulsions affected the bilateral treaties. The next chapter is an attempt to critically analyse major water treaties between India and Nepal, and see whether or not they are justifiable in terms of equality, equity, international law and other considerations.

³⁴ Salman M. A. Salman and Kishore Uprety, *Conflict and Cooperation on South Asia's International Rivers*, p. 104.

CHAPTER SIX

MAJOR WATER TREATIES BETWEEN INDIA AND NEPAL: A CRITICAL ANALYSIS

Abstract

This study has analysed five major water agreements between India and Nepal: the 1920 Sharada Barrage Agreement, the 1954 Koshi Treaty, the 1959 Gandak Treaty, the 1991 Tanakpur Barrage Agreement and the 1996 Mahakali Treaty. The Koshi and the Gandak agreements were so one-sided and controversial that they had to be revised within a few years of their signature. Tanakpur agreement, too, is very controversial. Though based on the principle of equality, the Mahakali Treaty also is not free from criticism. None of the treaties seem to pay any regard for international law. They are unequal in the matters of sharing of benefits. India's real intention has been questioned due to inability to prepare the DPR on Pancheshwar Project even after 18 years of signing the agreement. India has not provided compensation pending from as early as 1960s. The treaties have also infringed upon Nepal's sovereignty, and in many instances treat India and Nepal differently. Therefore, India-Nepal water treaties are unequal.

Major Water Treaties between India and Nepal

India and Nepal have so far concluded a number of treaties or agreements in the area of water resources¹. The main of the treaties include the ones on Sharada Barrage, Koshi River, Gandak River, Tanakpur Barrage and Mahakali River. This chapter details the provisions on these agreements, and tries to analyse them.

The Sharada Barrage Treaty

The Governments of India and Nepal concluded the Sharada Barrage Treaty in the form of Exchange of Letters. The first letter was sent to the then Prime Minister, Chandra Shumsher Jang Bahadur Rana, by the Chief Secretary to the United Provinces Government², which was sent as an enclosure to a letter to the Nepalese Prime Minister by Colonel Kennion, the British Resident, on 29 July 1920. Prime Minister Chandra Shumsher suggested some modifications to the provisions, which were acceptable to the British India Government.³ The British Resident replied to the Nepalese Prime Minister on 21 October 1920 confirming their acceptance of the proposal. This exchange of letters constituted the agreement on Sharada Barrage.

The Sharada Barrage agreement has three main features. First, the agreement provides that the Government of Nepal would “have right” for a supply of 460 cusecs of water from the

¹ For the purpose of this Chapter, the term treaty or agreement is used to mean treaty, agreement, understanding, MoU or other forms of agreement reached between India and Nepal, including Exchange of Letter.

² The United Provinces, which was also called the United Provinces of British India, was a province of British India, which came into existence on 3 January 1921 as a result of the renaming of the United Provinces of Agra and Oudh. It corresponded approximately to the combined regions of the present-day Indian states of Uttar Pradesh and Uttarakhand. It ceased to exist on 1 April 1937 when it was renamed as the United Provinces. For details, please visit www.worldstatesmen.org/India

³ The Nepalese suggestions included the Nepalese Government's right to the quantity of water to be supplied (minimum 460 cusec, and up to 1000 cusec, if available); all necessary works to be done by the Government of India "at their own expenses"; and mutual transfer the land.

canal headwork during the 'Kharif', or rainy season, i. e. from 15th of May to 15th of October, (and up to 1,000 cusecs, if surplus was available during this season); and of 150 cusecs during 'Rabi', or the dry season, i. e. from the 15th of October to 15th of May. To ensure such a supply, the canal head, during the dry season, would be closed and opened alternately for 10 days at a time running 300 cusecs whenever the canal is open.

Second, all necessary works needed for ensuring the supplies as above, such as the canal head with regulating gates, quarters for the canal staff, under-sluices for maintaining an open channel from the river to the canal head, etc., would be done by the Government of India at its own expenses and would retain full and entire control of the work with the undertaking that it would supply to Nepal the quantity of water agreed to free cost.

Third, the Government of Nepal would transfer necessary land for the construction and maintenance of canal works, which is provisionally estimated at 4000 acres, and would receive land equal in area from the British Government.⁴ The letters exchanged also mentioned about the ownership of trees to be felled during the construction of canal and other structures. The British side had mentioned in its letter that "the remaining trees on the land will be exchanged along with the land. The Nepal Durbar is not likely to lose by the exchange as the land which this Government is offering in exchange comprises valuable forest and grazing ground".⁵

The Koshi Agreement of 1954

India and Nepal concluded the Koshi Agreement on 25 April 1954. The Agreement was signed by Mr. Guljarilal Nanda and Mr. Mahabir Shumsher on behalf of the governments of India and Nepal, respectively. It was concluded because the Government of India was "desirous of constructing a barrage, head-works and other appurtenant work [s]"⁶ with the objectives of flood control, irrigation, generation of hydroelectric power and prevention of erosion of Nepal areas. The Barrage, which would be located about 8 miles upstream of Hanuman Nagar town in Nepal, would be constructed by and at the cost of the Government of India.

The Agreement provides that the Government of Nepal would authorise and facilitate concerned officers of the Government of India and other authorized persons to enter Nepalese territory with men, animals, vehicles, equipment, plant, machinery and instruments as necessary and undertake necessary surveys and investigations "during and after the construction, as may be found necessary from time to time by the Chief Engineer" (Public

⁴ Later, it was established that the exact size of the land would be 4,093.88 acres. The Government of British India had allocated equivalent land in Kheri, Bahraich and Gonda districts in Lucknow and Faizabad Divisions of the United Provinces (now in Uttar Pradesh). The sizes of the land allocated for this purpose were 2,914 acres in Kheri district, 65.3 acres in Gonda district and 1,114.58 acres in Bahraich district.

⁵ Para 4 of the letter from Chief Secretary of the United Provinces Government to the British Envoy at the Court of Nepal, dated 12 October 1920. The British Legation in Nepal forwarded this letter to Prime Minister Chandra Shumsher on 21 October 1920.

⁶ Preamble to the Agreement.

Works Department (Koshi Project) in the Irrigation Branch of the Bihar Government).⁷ Moreover, the Government of Nepal would also give necessary facilities for investigations of storage or detention dams on the Koshi or its tributaries, soil conservation measures such as check dams, afforestation, etc., “required for a complete solution of the Koshi problem in the future”⁸. The Government of Nepal also agreed to permit the occupation of lands and places required for the project for such period as may be necessary. The lands would be acquired by Nepal and the compensation would be paid by India. India was authorized also to quarry the construction materials required for the Project from the various deposits as Chatara, Dharan Bazar or other places in Nepal. India would pay royalties for stone, gravel and ballast obtained from Nepalese territory and used in the construction. Similarly, India would have right to “regulate all supplies in the Koshi River at the Barrage site to generate power at the same site for the purpose of the Project”.⁹ However, Nepal would be free to withdraw water for irrigation or any other purpose, as required from time to time. Nepal was also entitled to use up to fifty per cent of electricity on payment of tariff at a rate fixed by India in consultation with Nepal.¹⁰

The 1954 Agreement provided the ownership to the Government of India of all lands acquired by Nepal for the project and of all water rights secured to it (India) under clause 4 (i). However, Nepal's sovereign rights and territorial jurisdiction over the lands would continue unimpaired by the transfers. For the purpose of compensation, the lands would be categorised as cultivated lands, forest lands, village lands and waste lands.

Article 9 of the 1954 treaty authorizes India to construct and maintain roads, tramways, ropeways etc. required for the Project for which Nepal would provide land and India would pay compensation. Surprisingly, this article provides the ownership and the control of the metaled roads, tramways, and railway to India. The roads would be essentially departmental roads of the irrigation Department of India, and any concession on their use by Nepalese vehicles would not be deemed to confer any right of way.¹¹ However, the territorial rights would remain with Nepal. Besides, India would have the right to close the traffic on the bridge over Hanuman Nagar Barrage, which would be open for public traffic, for repairs, etc.¹²

⁷ Article 2 (i) of the Agreement has provided that “These surveys and investigations will comprise aerial and ground surveys, hydraulic, hydrometric, hydrological and geological surveys including construction of drill holes for surface and sub-surface explorations; investigations for communications and for materials of construction; and all other surveys and investigations necessary for the proper design, construction and maintenance of the barrage and all its connected works mentioned under the Project.

⁸ Article 2 (ii) of the Agreement.

⁹ Article 4 (i) of the Agreement.

¹⁰ Article 4 (ii) of the Agreement

¹¹ Article 9 (ii) of the Agreement reads: “Subject to the territorial jurisdiction of the Government, the ownership and the control of the metalled roads, tramways, and railway shall vest in the Union. The roads will be essentially departmental roads of the irrigation Department of the Union and any concession in regard to their use by commercial and non-commercial vehicles of Nepal shall not be deemed to confer any right of way.”

¹² Article 9 (v) of the Agreement.

The Agreement also provides some arrangements about navigation rights for the Government of Nepal. Article 10 mentions that all navigational rights in the Koshi River would rest with Nepal. However, permission from the Executive Engineer of the Barrage would be necessary for boat launches and timber rafts to be allowed within two miles of the Barrage. Similarly, all the fishing rights in the River would be vested in the Government of Nepal, with similar restrictions within two miles of the Barrage and headwork.

The Agreement made some provisions for dispute settlements as well. Differences or objections would be referred for arbitration to a body of two persons: one each to be appointed by both sides. The decision of the body would be final and binding. In the event of disagreement between the two arbitrators, they shall refer the matter to an Umpire who would be jointly appointed by the two parties.¹³

The Koshi Agreement of 1954 was widely criticized in Nepal. The critics maintained that the agreement was one-sided and gave India undue benefit at the cost of Nepal. Besides, the critics also maintained that the agreement violated Nepal's sovereignty. In view of the strong criticism inside Nepal, India agreed to revise it; and finally, it was revised in 1966. It was revised as suggested by Nepal "in order to meet the requirements of the changed circumstances"; and India agreed "with a view to maintaining friendship and good relation subsisting between Nepal and India".¹⁴

The revision can be explained by dividing it into four categories. First, it dealt with the execution of the project. The general layout of the barrage was changed; project-related constructions would be done in consultation with Nepal; works and undertakings that required Nepal's approval would be carried out only after securing Nepal's approval; and the Coordination Committee for Koshi Project established to discuss problems of common interest, was renamed as Indo-Nepal Koshi Project Commission, though, in effect, it was a continuation of the earlier Committee.

The second revision was regarding ownership of and sovereignty over land acquired by Nepal and transferred to India for the Project. It changed India's 'ownership' of land to 'lease'. According to the revised agreement, all the land transferred to India by Nepal would be leased for a period of 99 years from the date of the signing of the revised agreement. India, however, would pay the compensation at an annually nominal rate. The revision also confirmed that Nepal's sovereign rights and territorial jurisdiction, including application of Nepal's laws, would remain unimpaired with Nepal.

The third category of the revision related to the use of water and power. The 1954 Agreement provided that India would have "the right to regulate all the supplies in the Koshi River at the Barrage site and to generate power at the same site for the purpose of the Project", without, however, prejudice to the right of Nepal to withdraw such supplies as may be required from time to time.¹⁵ The 1966 revision changed the tone and language of this provision. It provided that the Nepalese side would have right to withdraw water from the Sunkoshi River and all

¹³ Article 14 of the Agreement.

¹⁴ Preamble to the 1966 Agreement.

¹⁵ Article 4 (i) of the 1954 Agreement.

the tributaries of the Koshi River. India would regulate the “balance” water at the Barrage site. The 1954 Agreement provided that Nepal would be entitled to use up to 50 per cent of the power generated at the barrage site powerhouse. The 1966 revision allowed Nepal to use such power generated in any of the power houses situated within a 10-mile radius from the Barrage site. If any power house would be constructed in the Indian territory, the Government of India would construct transmission lines up to a point in Nepal to be mutually agreed upon.

The fourth revision was on the use of communications. As has been mentioned above, Article 9 of the 1954 Agreement conferred ownership of the roads to be constructed on the Government of India. The revised Agreement, however, changed the tone and content of the earlier provisions. It said that India would construct roads required for the project, and Nepal would provide land which would be compensated. Use of roads by commercial vehicles would be decided by mutual consent. The 1966 revision also amended India’s right to close the bridge over Hanuman Nagar for public transport, and provided that India would be allowed to close the bridge “temporarily and if and in so far as required for technical or safety reason”.¹⁶

Other minor revisions relate to installation of telegraph/telephone lines, use of river-crafts and fishing rights, administration of the project area, and arbitration procedure.

The Gandak Agreement

India and Nepal concluded the Gandak Irrigation and Power Project Agreement on 4 December 1959. The Agreement was signed by Bhagawan Sahay, Ambassador of India in Kathmandu, and Subarna Shumsher, Deputy Prime Minister of Nepal.¹⁷

The Preamble to the Agreement mentions that both the Governments of India and Nepal considered that the project was in the interest of both governments, and that the Nepalese side had agreed to the constructions. The Government of Nepal authorized the Project Officers and other concerned persons to move in the project area with men, material and equipment "as may be required for the surveys and investigations in connection with the Project, before, during and after construction, as may be found necessary from time to time".¹⁸ Nepal would acquire necessary lands and transfer them to the Government of India. The Government of India would pay compensation for the land as well as for damage, if any, arising out of the execution of these works¹⁹. Article 6 of the Agreement also mentions that all works connected

¹⁶ Article 9 (iv) of the revised Agreement.

¹⁷ Initially, the Gandak Agreement was to be signed by India's Ambassador and Nepal's Prime Minister of the day, B. P. Koirala. But, B. P. Koirala was very unhappy with the Indian Ambassador due to his rude behavior and high-handedness. B. P. Koirala, in his autobiography (*Aatmabrittanta*) says, "the Indian Ambassador had spoken to me rudely; I did not like that. Therefore, during the time of signing the (Gandak) Agreement, I said I do not go to sign it." P. 233. Instead, B. P. Koirala asked his Deputy Prime Minister, Subarna Shumsher, to sign the Agreement on behalf of Nepal. B. P. Koirala has mentioned in details his differences with Indian Ambassador in the *Aatmabrittanta* from pp. 230 to 237.

¹⁸ Article 1 of the Agreement.

¹⁹ The notes exchanged between the two sides clarify that for determining the rate for compensation of lands, the government of Nepal would appoint an Expert Committee, with which the Revenue Officers of the project would also be associated. The Committee would fix the rates after field studies. The Government of India

with the Project in the territory of Nepal will remain the property of, and be operated and maintained by, the Government of India, provided that they could be handed over to the Government of Nepal for operation and maintenance at Nepal side's cost.

Article 5 of the Agreement allowed India to construct and maintain Western Canal in the Nepalese territory as well as communications for the construction and maintenance of the Project. The roads constructed in the project area would be departmental roads, and their use by Nepalese vehicles, both commercial and non-commercial, would be regulated as mutually agreed upon.²⁰

The Agreement provided that the Government of India would construct Western Nepal Canal, including the distributor system, and Eastern Nepal Canal, down to a minimum discharge of 20 cusecs. They could irrigate up to 40,000 and 1,03,500 acres of land respectively²¹. Nepal could construct channels with capacity below 20 cusecs; India could contribute as considered reasonable.²² The canal system and service roads situated in Nepalese territory, except the Main Western canal, would be handed over to Nepal for operation and maintenance at its own (Nepal's) cost.²³

Article 8 of the Agreement provides that the Government of India would construct a powerhouse with installed capacity of 15 thousand KW on the Main Western Canal in Nepalese territory. Nepal was entitled to get up to 10 thousand KW of power against payment of actual cost, including transmission, if applicable. With a view to protecting Nepal's riparian rights, the Agreement includes a provision that the Government of Nepal would have "the right to withdraw for irrigation or any other purpose from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time".²⁴ However, the same article also provides that Nepal would exercise this right in such a manner that it does not prejudicially affect the water requirements of the Project. The Agreement also provided that shortage of water required for irrigation would be shared on *pro-rata* basis between the two sides. It was also agreed that nothing in the Agreement shall derogate from the sovereignty and territorial jurisdiction of Nepal over the lands used by the Project.²⁵ There is also a provision for arbitration in case any dispute or difference is not settled through discussions. According to article 11, any of the parties may give a notice in writing to the other party of its intention to refer a dispute or difference to an arbitration. Each party would then nominate an arbitrator within 90 days from the delivery of the notice. If the arbitrators would be unable

would deposit the amount into Nepal Rastra Bank, and the Government of Nepal would make arrangements for distribution of compensation.

²⁰ Article 5 of the Agreement.

²¹ The exchange of notes mentions that this gross area would be possible only after training Bagmati River and divert it to its old eastern channel. Without this training of Bagmati River, the command area would not exceed 93,000 acres.

²² The same exchange of notes clarifies this point also. It says that such compensation would not cover costs for land requisition, but only actual work. It was estimated that the actual cost would be around Rs. 1.5 million, which the Government of India would compensate in reasonable instalments.

²³ Article 7 of the Agreement.

²⁴ Article 9 of the Agreement.

²⁵ Article 11 of the Agreement.

to agree on the dispute, the parties would consult and appoint an Umpire, whose award would be final and binding on the both sides.

As in the case of Koshi Agreement, the 1959 Agreement on the Gandak River, too, was criticized in Nepal. Therefore, the two sides exchanged a note on 30 April 1964, which made some amendments to the 1959 Agreement. The notes were exchanged between Nepal's Foreign Secretary Padma Bahadur Khatri and India's Ambassador Harishwar Dayal. In the amendments, the two sides agreed to add a paragraph after Article 7 which provided that "the head regulator of the Don Branch canal shall be operated by His Majesty's Government keeping in view the irrigation requirements of the areas irrigated by this branch canal in India and Nepal." Similarly, Article 9, which provided for protection of Nepal's riparian rights, was modified, which provided that Nepal's riparian rights would be protected in the river "valley"; and trans-valley transfer would have to be mutually agreed upon between the two sides. In practice, it meant that Nepal would not transfer water from one valley to another valley. Besides, the amendment deleted Article 10 of the 1959 Agreement, which provided for pro-rata sharing of water shortage for irrigation.

Tanakpur Barrage Project

The Tanakpur Barrage project was not new in early 1990s. It was conceived by India in early 1980s: the National Hydropower Corporation of India had completed the technical study of the project for generating 120 MW of power from the Mahakali River near Tanakpur in 1983; and the construction of the Barrage had already been completed in 1988. It was only after Nepal's representation against India's unilateral move that India agreed to redesign the project. Moreover, it was only because India had to tie the barrage to high ground in Nepalese territory that it had to approach Nepal. The agreement was concluded between the two sides on 6 December 1991, during the visit to India by Nepal's Prime Minister, Girija Prasad Koirala.

The Tanakpur agreement, which the then Government of Nepal termed as an understanding, provides that Nepal would make an area of 2.9 hectares (a strip of 577 metres) in Mahendranagar Municipality area of the Jimuwa Village available to India for tying up the Left Afflux Bund to the high ground in the Nepalese side.²⁶ India would construct a head-regulator of 1,000 cusec capacity near the left under-sluice of the Barrage and a portion of canal for supply of up to 150 cusec of water to irrigate between 4000 and 5000 hectares of Nepalese land. The release would be increased when the storage of water is increased.²⁷ India also agreed to provide to Nepal 10 MW of energy free of cost annually "as a goodwill gesture". It was also agreed that India would undertake investigations of a road connecting the Tanakpur Barrage to the East-West Highway in Mahendranagar.²⁸

²⁶ Para 1 of the understanding, as published in Nepal Gazette of 23 December 1991.

²⁷ Clause 2 of the Agreement.

²⁸ Clause 3 of the Agreement.

The Mahakali Treaty²⁹

India and Nepal concluded the Mahakali Treaty in 1996. It was initialed by External Affairs/Foreign Ministers of the respective countries on 29 January 1996, and finally signed by the Prime Ministers on 12 February the same year.³⁰

The Mahakali Treaty consists of three parts. The first and the second parts have incorporated the Sharada Barrage agreement concluded in 1920 and the Tanakpur agreement concluded in 1991, respectively.³¹ The third part relates to the integrated development of the Mahakali River.

In the Preamble, the two Governments have reaffirmed their determination to promote and strengthen their cooperation in the development of water resources, and have recognised Mahakali River as a boundary river on major stretches.³² The two governments also realized the need to conclude a treaty on the Mahakali River on the basis of equal partnership defining their obligations, rights and duties.

As the Mahakali River was recognized as the boundary river, both countries would have equal entitlement in the utilization of waters therein without prejudice to the existing consumptive use. The Pancheshwar Multipurpose Project is to be constructed as per the Detailed Project Report (DPR), and is to be designed and implemented based on two main principles:

- a) The project would be designed to produce maximum total net benefit in terms of power, irrigation and flood control;
- b) It shall be implemented as an integrated project with power stations of equal capacity on each side of the River. Both power stations would be operated in an integrated manner, and generated energy will be shared equally between India and Nepal.

²⁹ The formal name of the treaty is “Treaty between His Majesty’s Government of Nepal and the Government of India concerning the Integrated Development of the Mahakali River including Sharada Barrage, Tanakpur Barrage and Pancheshwar Project”.

³⁰ The Treaty was initialed by Mr. Pranab Mukherjee and Dr. Prakash Chandra Lohani, Ministers of External/Foreign Affairs of the two countries, and finally signed by Mr. P. V. Narasimha Rao and Mr. Sher Bahadur Deuba, Prime Ministers of India and Nepal, respectively.

³¹ Article 12 (a) of the Mahakali Treaty provides that the Sharada Barrage Agreement and the Tanakpur Agreement will be deemed to have been incorporated in this Treaty.

³² Recognition of the Mahakali River as a boundary river on major stretches is a controversial provision. The territorial boundary of present day Nepal was decided by the Treaty of Sugauli of 1815/16 (proposed on 2 December 1815 and exchanged on 4 March 1816), Memorandum of 8 December 1816, and the British India’s Treaty with Nepal of 1 November 1860. Article 5 of the Sugauli Treaty reads, “*The Rajah of Nipal renounces for himself, his heirs, and successors, all claim to or connexion with the countries lying to the west of the River Kali and engages never to have any concern with those countries or the inhabitants thereof.*” According to this provision, Nepal renounced its claims to the countries/areas lying to the ‘west’ of the Mahakali River, meaning the river itself belongs to Nepal. Therefore, there is a section of people in Nepal which believes that recognition of the Mahakali River as a boundary river stands against the Sugauli Treaty.

- c) Both countries would bear the cost of the project in proportion to the benefits accruing to them. The Treaty also provides that a portion of Nepal's share of energy would be sold to India. The quantum and price of the energy would be mutually agreed upon.³³

Article 9 of the Treaty provides for the Mahakali River Commission. The Commission would be guided by the principles of equality, mutual benefit and no harm to either party, and would comprise equal number of representatives from both sides. Both sides would equally bear the costs involved in the functioning of the Commission. In case the Commission fails to recommend its opinion about a difference within three months, or if either party disagrees with the recommendation of the Commission, the dispute would be submitted to an Arbitration consisting of three persons, one each nominated by each party, and the third, who would preside over the arbitration, would be appointed jointly. If both sides cannot agree to the joint arbitrator within 90 days, either party may request the Secretary General of the Permanent Court of Arbitration at the Hague to appoint such arbitrator, who shall not be a national of either country. Both sides would accept the decision of the arbitration as final, definitive and binding.

The foregoing paragraphs have briefly described the major water treaties between India and Nepal, without comparing them from equitable or equality point of view. The following section analyses the treaties from different perspectives.

B. Analysing the Treaties

The Indo-Nepal treaties on water resources need to be analysed from different perspectives. First, they should be looked into from legal point of view, i. e., whether they follow the principles set by international law. Secondly, we have to look at them from utilitarian perspective, i. e., whether or not the treaties are equitable or justifiable in the utilization of waters, power or flood control benefits. Thirdly, they have to be analysed from other points of view: do they violate sovereignty of any party; do they take both parties' interests into consideration; and are they implemented as provided by the provisions? The following paragraphs try to do this.

Legal Perspective

Though there is no treaty or convention on non-navigational use of international watercourse which has come into force, there are a number of treaties or conventions agreed upon by states. The most important among such treaties or conventions is the Convention on the Law on the Non-navigational Uses of International Watercourses adopted by UN General Assembly on 21 May 1997. This Convention is yet to come into force, but it can be taken as an example of international law in the area of water resources. This Convention has accepted

³³ Accordingly, the two sides initialled the India-Nepal Power Trade Agreement in Mumbai on 17 February 1996. This Agreement was initialled by Mr. P. Abraham, Secretary, Ministry of Power, Government of India and Dr. D. N. Dhungel, Secretary, Ministry of Water Resources of the Government of Nepal, respectively.

existing agreements among states³⁴, and has asked parties to, where necessary, to “consider harmonizing such agreements with the basic principles of the present Convention”.³⁵ There is a general trend among states to follow international law even if they are not parties to them. Therefore, the India-Nepal water treaties can also be compared with international water treaties and convention to find out how far they have followed international law.

The India-Nepal water treaties seem not to pay any attention to existing international law. Even if the international law in the area of watercourses was, and still is, in a formative stage, some guiding conventions or principles always existed in the area. The Madrid Declaration of 1911 was adopted long before India and Nepal concluded the 1920-Sharada Barrage agreement. After that, the Barcelona Convention of 1921, The Geneva Convention of 1923, the Dubrovnik Statement issued by the International Law Association in 1956, which was reiterated in 1964 in Tokyo, Helsinki Rules adopted by International Law Association in 1966 and the subsequent rules adopted from time to time³⁶ were present for reference and guidance while concluding treaties by India and Nepal. Let us reconsider India-Nepal treaties from legal point of view.

When the Sharada Barrage agreement was concluded in 1920, there was no major convention on non-navigational uses of international watercourses. The Madrid Declaration of 1911 and the Barcelona Convention have provisions about non-navigational use of international watercourses but do not provide much about such use. But, when the Koshi Agreement was concluded in 1954, there were Geneva Convention of 1923, besides the Madrid Declaration and Barcelona Convention. The Geneva Convention requires that concerned states hold negotiations and conclude agreements to operate hydropower projects. It is interesting that the Government of India unilaterally decided to take up the project, and a team was sent to Nepal to formalize Nepal’s approval. The team had a plan to go to Nepal, get Nepal side’s signature and return to Delhi the same day, but had to stay for two days. There were no meaningful negotiations before the conclusion of the agreement. Similar is the story behind Gandak Agreement of 1959. The Dubrovnik Statements issued in 1956 provided for equitable and reasonable utilization of watercourses and restrained control of waters in the territory of a state so as not to affect other riparians adversely. Moreover, the New York Declaration of 1958 by the International Law Association clearly stipulates that “each co-riparian state is entitled to a reasonable and equitable share in the beneficial usage of the waters of the drainage basin”³⁷ The India-Nepal agreements concluded even after this declaration pay no heed to these principles.

It is equally interesting that Salzburg Resolution was already adopted in 1961, before the revision of the Koshi and the Gandak agreements in 1966 and 1964 respectively. Salzburg

³⁴ Article 3 (1) of the Convention states: “In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.”

³⁵ Article 3 (2) of the Convention.

³⁶ It may be noted that the Helsinki Rules were the bases for the principles and rules adopted by International Law Association in 1972, 1976, 1980, 1982 and 1986 on various subjects. See the Chapter on Theoretical Framework for details.

³⁷ Article 2 of the Report of the 48th Conference.

Resolution adopted the principles of maximum utilization of available resources, no unlawful harm to other riparian states, 'equity' and 'needs' of riparian states, and prior notification for works on international watercourses. Moreover, the Helsinki Rules of International Law Association adopted in 1966 established the principle of reasonable and equitable utilization of waters of a drainage basin, which was reinforced by subsequent resolutions. The Tanakpur issue is another example of disregard for international law. India started construction of the barrage in 1983, without providing any information to Nepal, which is against the principle established by Salzburg Resolution.

The Mahakali Treaty of 1996 is different, however. It is based on the principle of sharing costs and benefits equally. Moreover, it also seems to follow the principle of maximum utilization of available resources, as adopted by Salzburg Resolution of 1961. Besides, Article 5 of the Treaty stipulates that water requirements of Nepal would be given prime consideration, somehow reflecting the principle of absolute territorial sovereignty. This Treaty also pays due regard to environmental protection and biodiversity by agreeing to maintain flow and level of waters of the river.

The earlier India-Nepal water treaties also have inconsistency on the four broad principles being developed from the perspective of riparians' rights and utilization. Some provisions seem to support the principle of absolute territorial sovereignty while others seem to favour absolute territorial integrity. Some seem to follow basin approach and others no unlawful harm clause. Article 4 of the Koshi Treaty, for example, stipulates that Nepal "would have every right to withdraw for irrigation and for any other purpose in Nepal water from the Koshi River....as may be required from time to time". Interestingly, the same Article, in the 2nd sentence, authorizes India to regulate all supplies of water in the Nepalese territory (at the barrage site). Article 9 of the Gandak Agreement allows Nepal the right to withdraw water as required. The same Article, again, requires Nepal to conclude agreement with India for trans-valley uses of water between February and April, which provision seems to follow the principle of absolute territorial integrity. The Mahakali Treaty, however, seems to follow the principle of restricted territorial sovereignty by agreeing to develop the Pancheshwar Multipurpose Project in an integrated manner.

Sharing of Benefits

Indo-Nepal water treaties are very imbalanced in the sharing of benefits. As has been mentioned at the outset, in the Introduction, it seems that the treaties look more like some understandings between a giver and a recipient. They quantify the share of water Nepal would get, but never mention the quantity for India. The Sharada Barrage Agreement, for example, provides that Nepal would get 460 cusecs of water in the summer and 150 cusecs in the winter.³⁸ It does not, however, mention the quantity of water India would get, nor the quantity of water available at the Barrage site. The Koshi Agreement provides that Nepal would "have every right to withdraw" water for irrigation or any other purpose from Koshi basin or the Koshi's tributaries.³⁹ And, India would have right to regulate all the balance of supplies. It is surprising that India is allowed to regulate all the balance water in the river in Nepal, in Nepalese territory. The two canals built on either side of the 1150-metre Barrage irrigate

³⁸ Article 1 of the Sharada Barrage Agreement.

³⁹ Article 4 (1) of the Gandak Agreement.

9,68,610 hectares of Indian land, while irrigating only 11,300 hectares of Nepalese land.⁴⁰ The Agreement also provides that Nepal shall be entitled to obtain up to fifty per cent of electricity generated from the powerhouses in its territory. But, it does not necessitate India to produce the possible quantum of power.

The Gandak Agreement is very interesting from benefits' point of view. While going through the Agreement, one can be misled to feel that the project was conceived only for the benefit of Nepal. The Preamble mentions that the purpose of the project is irrigation and development of power for Nepal and India. And, the provisions mention only the benefits for Nepal. Article 7 of the amended Agreement provides that India would construct, at its own cost, Western Nepal canal for providing flow irrigation to an estimated gross command area of 40,000 acres;⁴¹ and Eastern Nepal canal from the tail end of the Don Branch Canal for the flow irrigation in Nepal for a gross command area of 1,03,500 acres.⁴² Similarly, Article 8 provides that India would construct one Powerhouse with an installed capacity of 15,000 kW in Nepalese territory, and transmission lines up to border points; and India would supply to Nepal to an aggregate maximum of 10,000 kW. Interestingly, the Agreement does not mention anything about the land mass to be irrigated in India, nor the quantum of power for India. In practice, the canals irrigate 57,900 hectares of Nepalese and 18,50,000 hectares of Indian land. All the potential benefits, except the ones specified for Nepal, would go to India. The Tanakpur Agreement is not much different. It says that India would construct a head regulator of a capacity of 1,000 cusecs near the under-sluice of Tanakpur Barrage for supply of 150 cusecs of water to irrigate between 4,000-5,000 hectares of land on Nepalese side"; and that India, "as a goodwill gesture", agreed to provide to Nepal 10 MW of energy annually free of cost.⁴³

The earlier trend was somehow reversed in the Mahakali Treaty concluded in February 1996. While reconfirming and incorporating the 1920-Sharada Barrage agreement and the controversial 1991-Tanakpur Barrage agreement, the Mahakali Treaty has made provisions to share benefits, and costs, equitably from the Pancheshwar Multipurpose Project. In Article 3 of the Mahakali Treaty, India and Nepal agree that "they have equal entitlement in the utilization of the waters of the Mahakali River". Besides, the two sides agree to design the project to produce "the maximum total net benefits" in terms of power, irrigation and flood control; and to implement it as an integrated project with "power stations of equal capacity on each side of the Mahakali River" to be operated in an integrated manner. The treaty also provides that the two sides will bear the cost of the project "in proportion to the benefits accruing to them".⁴⁴ Departing from the past practice, the Treaty has also provided that a portion of Nepal's energy generated from the Project would be sold to India. In addition, India has also agreed to supply 350 cusecs of water to Nepal to irrigate Dodhara-Chadani

⁴⁰ The eastern canal irrigates 6,12,000 hectares of Indian territory, and the western canal irrigates 11,300 hectares of Nepalese and 3,56,610 hectares of Indian agricultural land.

⁴¹ Article 7 (i) of the Agreement.

⁴² Article 7 (ii) of the Agreement.

⁴³ Article 3 of the Agreement mentions that India agreed to provide this electricity in spite of the fact that "this will add to a further loss in the availability of power to India from Tanakpur power station."

⁴⁴ Article 3 (3) of the Treaty.

area of the Nepalese territory. The Treaty stipulates that Nepal's water requirements "shall be given prime consideration in the utilization of the waters of the Mahakali River".⁴⁵ It also provides that other projects in the Mahakali River would be developed based on the principles established by this Treaty.

Compensation and Indian Commitments

The issue of compensation is a long pending issue. The Koshi and the Gandak agreements have provisions for compensation. Article 3 (ii) of the Koshi Treaty and Article 3 (i) and 3 (ii) of the Gandak Agreement provide for compensation. According to the provisions, the Government of Nepal has to acquire or requisition the land required for the projects, and the Government of India would pay compensation for such land. Article 8 of the Koshi Treaty has categorised land for the purpose of compensation.

The issue of compensation is still an agenda item of meetings between Indian and Nepalese Government authorities. The two sides hold regular meetings of different joint mechanisms under water resources.⁴⁶ These meetings discuss the issue of compensation, among others; but this issue has always remained in the agenda. According to official sources, the Indian side is still to pay compensation for 7,690 *bighas*⁴⁷ of land.⁴⁸ The first bilateral Ministerial Meeting, held in New Delhi on 15 February 2012 discussed the issue of compensation, and directed the JCWR "to look into these problems".⁴⁹ As the compensation of land eroded as early as 1961 is still pending, this problem undoubtedly is a long-pending issue.

Infringement of Nepal's Sovereignty and Right to Equality

Besides the issues of benefits, compensation and India's commitments, disrespect for Nepalese sovereignty and inequality of treatment are issues that Nepalese side has been raising from time to time. In the Koshi Treaty, for example, India is referred to as "the Union" whereas Nepal is referred to as "the Government". Some persons in Nepal have interpreted it as disregard for Nepal's sovereignty. Aditya Man Shrestha opines that use of such terms give an impression that Nepal is a part of India.⁵⁰ Moreover the agreements, especially the Koshi and the Gandak agreements, have provisions which mention that all the project-structures in Nepalese land would be the properties of India. Similarly, the agreements provide free movement and use of materials and other facilities by Indian nationals, whereas

⁴⁵ Article 5 (1) of the Treaty.

⁴⁶ Such mechanisms include those at the level of Ministers (JMCWR), at the level of Secretaries (JCWR), and at the level of Joint Secretaries (JSCWR).

⁴⁷ *Bigha* is a measurement of land used in some states in India as well as Nepal. In Nepal, a *bigha* is equal to about 6,773 square meters of land.

⁴⁸ See the Agreed Minutes of the JCWR meeting held in Kathmandu (www.moen.gov.np/Bilateral Minutes). According to the Minutes, 1516 *bighas* were eroded during 1961-1964; 3948 *bighas* were eroded during 1965-1968; and additional 2226 *bighas* were jointly verified by the officers from both sides. The rates of compensation for the lands have also been determined.

⁴⁹ The Press Release issued after the meeting states, "JMCWR also noted the concerns of Nepal side regarding payment of compensation for land and damage of crops. JMCWR directed the Joint Committee on Water Resources (JCWR) to look into these problems. (See www.moen.gov.np/press releases).

⁵⁰ Aditya Man Shrestha writes: "Arguably the impression the treaty gives is that Nepal is a part of India- as if a provincial authority was signing an agreement with the central authority". *ibid* p. 157.

“authorized servants of HMG” only are allowed to use communication facilities in business in emergencies without affecting the project.

Besides, the Nepalese side is facing serious problems from flooding every year; and Nepalese authorities have to request Indian authorities to open Barrage gates in Nepalese territory to protect their people from floods. The occasional damage and threats posed by Koshi and Gandak rivers are regular phenomena for Nepalese people. It is in addition to the woes of the Nepalese side arising from unequal treatment.

What do the Indian scholars think about the grievances of the Nepalese side? In general, Indian scholars, and officials also, feel that mistakes were made during the Koshi and Gandak agreements. They also opine that these treaties need to be viewed in the context of the times. In an interview, R. Ramaswamy Iyer, an Indian expert on water resources, says,

I do believe that the relations between the two countries have been mishandled on both sides. There has been insensitivity and highhandedness on the part of India and a pathological touchiness on the part of Nepal. India has a propensity to make mistakes repeatedly, and Nepal has a propensity to misinterpret everything that India does or says, put the worst possible construction on Indian actions and statements, and ascribe active malevolence to India.⁵¹

Another Indian scholar, B. G. Verghese, rejects the notion that Indo-Nepal water treaties are unequal. Asked about the unequal nature of the agreements, he says,

...despite some problems and misunderstandings, as Nepal has gained considerable direct and collateral benefits from these projects. The Kosi and Gandak Project were also reviewed and certain concerns of Nepal addressed. Likewise regarding Tanakpur.⁵²

He also feels that no international law was violated and that India did not disregard Nepalese interests.⁵³

Prof. S. D. Muni, who is regarded as one of the highest ranking Nepal experts in India, feels that the water treaties between India and Nepal are unequal and give undue benefit to India. He writes,

There is some truth in the allegation of one sided and exploitative use of Nepal's water resources by India in what is known as mutual benefit projects between the two countries such as Kosi and Gandak projects. It is generally conceded that these projects give greater advantage to India than to Nepal and thus could have been better designed to ensure adequate benefits to the Nepali side.⁵⁴

⁵¹ Interview with Mr. Ramaswamy R. Iyer on 20 October 2009.

⁵² Interview with B. G. Verghese on 11 September 2009.

⁵³ *Ibid.*

⁵⁴ S. D. Muni, *India and Nepal: A Changing Relationship*. Konark Publishers. New Delhi (no date of publication given), p. 3.

From the foregoing, it can be said that India-Nepal water treaties did not pay any regard to international water law; they do not provide equal or equitable benefits to both countries, and are one-sided in India's favour; India has not fulfilled its obligations for compensation and other commitments made under the treaties; Nepal's sovereign rights and other related aspects are not respected; and Nepal has been suffering more, paying unnecessarily high prices, and getting far less benefits than it is entitled to.

Therefore, India-Nepal water treaties are unequal.

It has been established that India-Nepal water treaties are unequal, and Nepal has to pay greater price than the benefits it can get. Then, the natural question that arises is: why did Nepal sign such unequal treaties? The next chapter tries to find answers to this question.

CHAPTER SEVEN

WHY DID NEPAL SIGN THE UNEQUAL WATER TREATIES WITH INDIA?

Abstract

There were many reasons that made Nepal conclude the unequal treaties with India. The political relationship and historical background was one of the reasons. Nepal was not in a position to make big investment due to poor economic condition. Lack of awareness about international law and ensuing rights and responsibilities as well as that of expertise in the field also contributed to the conclusion of unequal treaties with India. Absence of informed population and civil society was another reason. Minimal use of electricity and irrigation facilities kept Nepal from realising the importance of water resources. Other reasons included Nepal's reactive approach, lack of constitutional provisions requiring ratification, and electricity-centric approach taken by Nepal. Another important reason was the absence of a third party to back Nepal or mediate between India and Nepal. Equally important was India's high-handedness that resulted in India's unilateral behaviour. The example of Egypt's behaviour on the Nile River can also be taken as an example of why states take strong position on certain issues. All these factors can be summarised under three headings: disregard for international law, India's power politics and Nepal's dependence on India.

In the last chapter, it was established that the water treaties between India and Nepal are unequal. Countries, at least in theory, are independent and sovereign, and, therefore, are independent to agree or disagree to conclude any treaty or agreement with another country. It is also true that countries refrain from reaching agreements with other countries which are unequal and are not in their favour. There must be some reasons for agreeing to unequal, unjustifiable and disadvantageous treaties. It is true in Nepal's case as well. Then, the question arises: why did Nepal agree to conclude the unequal treaties with India? This chapter attempts to find an answer to this question. The answer, though it seems easy and straight, is not that simple. There were political reasons; there were economic reasons; and there were other factors that compelled and necessitated Nepal to conclude the agreements. At the same time, we will have to look at the historical context and examine whether the historical context of the relationship between India and Nepal had any bearing on the conclusion of the treaties between the two countries. Similarly, the background and the pattern of the relationship between India and Nepal also needs to be looked at. In many instances, the pattern of relationship between states has affected other aspects of relationship, including the conclusion of bilateral and/or multilateral treaties. The contemporary international situation also may have affected the bilateral relationship between India and Nepal. As has been discussed earlier, in the chapter on Theoretical Framework, Kenneth Waltz believed that the international system or the contemporary structure of world politics determines the relationship among states or the units. In this context, we need to study whether the contemporary international situation compelled Nepal to agree to the unequal water treaties with India. Besides, the contemporary domestic situation of Nepal also was responsible for making Nepal agree to the water treaties with India. There were other factors responsible for making Nepal agree to conclude

the treaties. They include the level of general awareness among the people about the importance of water, lack of knowledge of international law, and the level of expertise available in the country, absence of a third party, etc.

Before identifying specific reasons that made Nepal agree to the unequal treaties with India, it would be appropriate, and necessary, to apply the theoretical framework that has been discussed in Chapter 2 of this thesis, and analyse how Nepal's ignorance of prevailing international law, India's high-handedness and power politics, and Nepal's over-dependence on India compelled it to conclude the unequal and inequitable treaties with its bigger neighbour.

Applying Theoretical Framework

The Second Chapter of this thesis, the Chapter on Theoretical Framework, has identified international law, power politics of Realism, and Dependency as the bases for explaining India-Nepal water treaties from theoretical point of view. Neither country paid any heed to prevailing international law while signing the water treaties. At the same time, India's power politics and Nepal's dependence on India played crucial role in making Nepal sign the unequal treaties with India. It would, therefore, be appropriate to revisit the theoretical framework, and apply the tools to explain India-Nepal water treaties.

International Law

As has already been mentioned, international law is, and should be, the legal basis for the conduct of relations among sovereign states. International law provides two broad bases in the conduct of relations among states. First, it accepts and requires that states are equal, and have equal rights and responsibilities vis-à-vis each other. It also provides that benefits accruing from different measures should be equal or equitable, and that countries have no right to take undue benefit from their weaker partners. Second, international law also provides guidelines and framework in the conduct of relations among states. There are a number of multilateral treaties and conventions that set guidelines for states to follow while conducting relations with other states. It would be appropriate to mention here that treaties or agreements between or among states are accepted valid by international law unless either party rejects them under certain grounds, as stipulated by the Vienna Convention on the Law of Treaties.

India-Nepal water treaties seem to ignore international law, or, to say the least, seem not to pay any regard for provisions of international law. Chapter six has compared the treaties with, and tested against, the provisions of international law, and found that they have not paid any regard to international law. They have not referred to any international treaty or convention, nor have tried to bring the treaties in line with the provisions of international law. Still, the treaties stand valid, because neither party has claimed otherwise. However, it can be assumed that the treaties could have taken another form had international law been given due consideration while concluding them.

Power-politics

Power-politics can provide a better framework for explaining India-Nepal water treaties. Power politics is closely related to realism; and here, it is used to mean, what Martin Wight calls the use of power, meaning strength, by a stronger state against relatively weak state(s) to achieve its national interests. As Morgenthau has argued, small or weaker states depend on powerful neighbours for the protection of their sovereignty. In this sense, Nepal had to rely on India for the

protection of its sovereignty as well as for many other things including necessary supplies and transit. Its interactions and exchanges with China were rather limited. Because of its decisive dependence on India, Nepal was compelled to conclude unequal treaties with India.

According to Martin Wight's definition and classification, India in the 1950s can be categorised as a Minor Power, neither regional or middle nor great power. Minor powers, according to Wight, have the means of defending only limited interests, have territorial disputes with their neighbours, have to sell their raw materials, and their foreign policy is so limited that their main foreign policy objective is preservation of their independence.¹ India was a bigger power than Nepal in every sense of the term: size, population, economic resources, industrial production, administrative and financial efficiency, education and technological skills, etc. India used its influence, meaning power and pressure- both political and economic- to secure its interests and achieve its objectives vis-à-vis Nepal, including the water treaties.

As Martin Wight has mentioned that powerful states do not take 'soft power' factors, such as morality, political maturity, peace, etc. into consideration, India, too, did not pay any regard to such factors. It got what it wanted, and did not pay much heed to the issues which were important for Nepal. Canals that were built in Nepalese territory, compensation to be provided under the Koshi and Gandak agreements, sill level at Tanakpur, Barrage, etc. are examples of India's insensitivity to Nepal's rights and interests. Furthermore, if we consider India-Nepal water treaties from the perspective of game theory, which is an important element for realist scholars, the water treaties between India and Nepal resulted in a win-lose situation: win for India, loss for Nepal. India has got irrigation facilities incomparably more than Nepal; most the electric power that can be produced is in India share; the ownership of the projects, even in Nepalese territory, lies with India; and Nepal has been suffering from inundation and draught, and a situation of deprivation of rights on its rivers in its territory. The unequal aspect of the treaties and the sufferings that Nepal has been bearing have been discussed in detail in chapter six of this study.

Dependency

Dependency theory provides another tool for explaining India-Nepal water treaties. Nepal's unequal and "exploitative relationship" with India compelled it to conclude the unequal treaties. As Theotonio Dos Santos defined, dependency is "a situation in which the economy of certain group of countries is conditioned by the development and expansion of another economy, to which their own is subjected".² In the 1950s and later, Nepal's economy and overall development was, and is, very much conditioned by India. Nepal's dependency on India for almost all aspects of life, India's relatively higher level of development and expertise, and Nepal's lack of meaningful cooperation with other powers all contributed to make Nepal further dependant on India. In the context of Dependency Theory, Nepal's contemporary rulers played the role "comprador" class, which assisted India in exploiting their own citizens. Thus the elements of Dependency Theory were present in the relationship between India and Nepal: their relationship could be characterised as dominant/dependent, or centre/periphery, or metropolitan/satellite; Indian policies and actions played decisive role in the economic activities within Nepal; and the dependent relationship

¹ Martin Wight, *Power Politics* (Continuum International Publishing Group, 2002), p. 23.

² Theotonio Dos Santos, "The Structure of Dependence", in K. T. Fann and Donald C. Hodges, eds., *Readings in US Imperialism* (Boston: Porter Sargent, 1971), p. 226, as cited by Vincent Ferraro.

between the core (India) and the periphery (Nepal) is a dynamic and an ongoing process, and the interactions between the two have not only reinforced but also intensified the unequal patterns between the two countries. Similarly, the pattern of Nepal's dependency on India can be explained applying the approach of Globalism, which emphasises the exploitation of weaker and poorer countries by stronger and richer ones. Other two approaches, as proposed by Realism and Pluralism, do not seem to accurately define this dependant relationship. Not Realism, because it focuses on statism, self-help and survival, and making or breaking coalitions of states. The relationship between India and Nepal was not that of adversaries or enemies. Neither threatened the survival of the other. Moreover, both were poor and developing countries with limited availability of resources. Not Pluralism either, because it, *inter alia*, focuses on non-state actors and the sense of cooperation among states. There was no role of non-state actors in the conclusion of India-Nepal water treaties in the 1950s and 60s. It was done purely at the initiation and participation of the government machineries, and at the level of the governments. Besides, there seems an absence of the sense of cooperation. Though the treaties seem to suggest a sense of cooperation from the wordings, they in reality were designed and implemented by India for its purpose. Furthermore, Nepal preferred to maintain linkages with India and tried to improve relations and cooperation, not confrontation. However, in Nepal's case, dependency became both cause and effect of dependency and backwardness, creating a type of vicious circle. This kind of dependency on its closest neighbour was one of the factors that made Nepal sign the unequal treaties with India.

Learning by Doing: the Constructivist Approach

Nepal has a long history of hydropower development, which began with the construction of the Pharping Power Project in 1911, and irrigation with the construction of *Chandra Nahar* (Chandra Canal) in 1923³. However, Nepal is yet to fully develop its economic capability and technical expertise, and be able to develop projects on its own. By the 1950s, Nepal's overall capability was very limited, and therefore, it was compelled to conclude unequal treaties with India.⁴ With the passing of time, Nepal gradually started realising the importance of water, started developing its technical expertise, Nepalese people developed awareness, democracy was restored in Nepal which encouraged the people to speak in favour of national interest, and developed vibrant civil society which created restrictions on government monopoly. By all these developments, Nepal is now more aware of its rights and international obligations. It is true that there were internal oppositions to the earlier treaties as well. There were popular protests against the 1954-Koshi Agreement as well as the 1959- Gandak Agreement. By 1990s, Nepal's democratic institutions were far strong, so were public awareness and civil society. This all contributed to making later treaties less unilateral, and more balanced. The Chapter on India-Nepal Water Relations (Chapter V) has discussed in details how the public reaction compelled the Government of Nepal to tread more cautiously in reaching agreements with India. This can be attributed to democracy, public awareness, enhanced realisation of the importance of water resources in Nepal, etc. Thus, it was a learning-by-doing process for Nepal or the application of the theory of Constructivism.

³ Prachanda Pradhan, *Patterns of Irrigation Organisation in Nepal: A Comparative Study of 21 Farmer-Managed Irrigation Systems* (Colombo, Sri Lanka, International Irrigation Management Institute, 1989), p. 1.

⁴ The unequal nature of treaties between India and Nepal is not limited to water resources alone. There are other treaties as well which demonstrate unilateralism. The 1950-Treaty of Peace and Friendship is another example.

The theoretical framework has provided the groundwork for the reasons that compelled Nepal to sign the unequal treaties with India. However, there were some specific reasons behind such compulsion. Those reasons can be enumerated as follows.

A. Historical Background and Political Reasons

In the beginning, Nepal was a unified state, but got divided into many small principalities in the course of its history. It was only during the reign of King Prithvi Narayan Shah (1769-1831) that Nepal was reunified. His descendants continued the unification process, and expanded Nepal up to Kangara Fort in the west (which is now in India) and Teesta River in the east, which is now the border river between Bangladesh and India. The Sugauli Treaty with British India, which was reached at the conclusion of Indo-Nepal war of 1814-15, brought the boundaries of Nepal to the present size.⁵ The internal political situation of Nepal limited Nepal's contacts with the outer world, and after 1850s, its contacts were limited to British India alone. The Rana rulers tried to please and appease the British rulers of India to sustain their authoritarian rule in Nepal. It was only in 1950, after the independence of India, that Nepal also achieved democratic dispensation after the fall of the family rule of the Ranas.

Nepal was politically isolated from the outside world in the 1920s. So, there is no point discussing the conclusion of the Sharada Barrage agreement. Even by 1954, when the Koshi Treaty was signed, Nepal was virtually isolated from the outside world, and its contacts were limited to India alone. The Rana regime had fallen in 1951, with the political support and mediation of India; Nepal was politically very weak and inexperienced, and had to look at India for every type of support and advice. To cite one example. Mr. Matrika Prasad Koirala, who was Nepal's Prime Minister at the time, wrote to India's Prime Minister, Jawaharlal Nehru, in April 1952, requesting for a number of assistance measures by India to Nepal. He writes, "Nepal can look for help from her elder sister India only".⁶ Even by 1954, Nepal was not a member of the United Nations nor had it established diplomatic relations with China.⁷ Even the First Plan document, which was brought out by the Government itself, confesses that, "(u)ntil 1950-51, when there was a change in regime, we were one of the most isolated countries of the world, cut off from effective contact with modern influences, which in varying degree were transforming the economic life of most other nations."⁸ The outer world also knew very little about Nepal. Nepal had applied for UN Membership in April 1947, but the then Soviet Union had used veto against Nepal's membership asking for evidence of Nepal's status as an independent country. Under such a situation, it was very natural that India could use its influence to get the unequal treaties signed with Nepal. Due to such circumstances, it was so easy for India to get the Koshi Agreement signed in 1954 that India's Minister, Guljarilal Nanda, reached Kathmandu on 24 April, got it signed and returned to Delhi the next day. There were no earlier communications, nor any negotiations on the Treaty.

⁵ The present boundary of Nepal also includes the territories that were returned to Nepal by the British rulers in 1816 and 1860.

⁶ Matrika Prasad Koirala, *A Role in a Revolution* (Kathmandu: Jagadamba Prakashan, 2008), p. 212.

⁷ Nepal established diplomatic relations with China on 1 August 1955, and became a member of the UN on 14 December 1955.

⁸ First Plan Document (Chapter 1), National Planning Commission, Government of Nepal (www.npc.gov.np/plans/first plan).

B. Economic Reason

One of the reasons why Nepal signed the unequal treaties with India was the very weak economic situation of Nepal, which made it impossible for Nepal to develop projects on its own. Hydropower projects are expensive ventures, which require huge funds and years of work. The following table gives an estimation of the costs of Nepal's national water plan.

Estimated Programme Cost for Water Resources Management and Development in Nepal, as estimated by the National Water Plan, 2005 (in Nepalese Rupees million).

	<i>Short term</i>	<i>Medium term</i>		<i>Long term</i>		
<i>Area</i>	<i>10th Plan (2002-7)</i>	<i>11th Plan (2007-12)</i>	<i>12th Plan (2012-17)</i>	<i>13th Plan (2017-22)</i>	<i>14th Plan (2022-27)</i>	<i>Total</i>
Water Induced Disaster	5264.1	6799.6	10045.9	6631.3	6297.1	35038
Environment Action Plan	2335.07	1622.2	1550.1	1508.6	1502.5	8518.47
Water Supply and Sanitation	29028.8	42744.9	48951.4	53243.7	57389.3	231358.1
Irrigation for Agriculture	21697	53418.7	50540.1	62916	77981	266552.8
Hydropower Development	47058	113549	132225	159862	181451	634145
Fisheries	840.8	1651.9	1651.9	1609.3	1609.3	7363.2
Water-related Information System	203.9	99	99	8.2	8.2	418.3
Institutional Mechanism	6804.8	8637	8165.7	6600.9	4518.5	34726.9
Total	<i>113232.47</i>	<i>228522.3</i>	<i>253229.1</i>	<i>292380</i>	<i>330756.9</i>	1218120.77

Source: National Water Plan, Ministry of Energy, Kathmandu, Nepal (also available at www.moen.gov.np/policy).

Till the 1950s, Nepal was not only politically isolated but was almost fully dependent on India. The letter by Prime Minister Matrika Prasad Koirala to his Indian counterpart, Jawaharlal Nehru, asks for even very trifling things like stenographers, clerks and other assistant staff, and also requests the Indian side to bear even the travel expenses of the team, which Nepalese side requested from the Indian side.⁹

⁹ Matrika Prasad Koirala, *A Role in a Revolution*, pp. 211-17.

Nepal's economic condition was so weak that hundred per cent of the development budget as provided for in the first five year plan, which Nepal announced in 1955 and implemented from 1956, was to be borne by foreign aid. It is interesting to note what Ms. Mieko Nishimizu, Vice President of the World Bank, said during the inauguration of Nepal Development Forum on 4 February 2002 in Kathmandu:

Development of Nepal has brought many benefits to her people. Over 30 years ago, only 2% of the people had access to safe water; today, nearly half do. A Nepali child born 30 years ago could expect to live only about 40 years; today, the child can expect to live about 60 years. More than two-thirds of children under five were malnourished 30 years ago; today, more than half of them are well nourished for learning. Only 5 out of 100 girls attended primary school 30 years ago; 90 out of 100 girls do today.¹⁰

This was the situation of the 1970, it can be assumed that Nepal's economic situation in the 1950s was very miserable. Nepal had just got rid of the 104-year long family rule of the Ranas, who took government coffers as their own private properties; there was no industrialisation; its foreign trade mostly comprised imports, and was limited to India and Tibet; economic activities and development were greatly affected by political instability. The Nepalese society as a whole was very primitive, and cut off from the international community. Under such a situation, Nepal could not imagine that it would be in a position to invest in hydro-projects. Moreover, as India had agreed to construct all the structures on its own expenses, and Nepal could get some of the benefits, Nepal agreed to Indian proposals. When asked whether the treaties could be taken as examples of India's intention to exploit Nepal's lack of expertise and economic weaknesses, Mr. B. G. Verghese frankly states, "(t)his is an unfounded allegation. In 1954 Nepal lacked even detailed contour maps to permit construction deeper within Nepalese territory".¹¹

C. Lack of Awareness and Expertise

Lack of awareness and expertise is another reason why Nepal agreed to conclude the unequal water treaties with India. Nepal's isolation from the international community had bearing on its lack of awareness of international affairs. It did not have legal experts, nor did it have the understanding of what was going on about international water law. It can be assumed that it did not have any understanding about the importance and value of water, or that it would be an important resource at a later stage. Nepal is an upper riparian, but it did not have any awareness of its rights or obligation as an upper riparian state.

There are many examples of Nepal's naivety, ignorance and lack of understanding. Paragraph 4 of the letter exchanged along with the 1950 Treaty of Peace and Friendship between India and Nepal can be cited as one of many examples. The para reads:

(4) If the Government of Nepal should decide to seek foreign assistance in regard to the development of the natural resources of, or of any industrial project in Nepal, the government of Nepal shall give first preference to the Government or the nationals of India, as the case may be, provided that the terms offered by the Government of India or Indian

¹⁰ www.ndf2002.gov.np, Address by the World Bank Vice President, Mieko Nishimizu.

¹¹ Interview with B. G. Verghese.

*nationals, as the case may be, are not less favourable to Nepal than the terms offered by any other foreign Government or by other foreign nationals.*¹²

According to this provision, Nepal agreed to give preference to the Government of India or the nationals of India. But, it is surprising that Nepal did not ask for reciprocal treatment in such matters from India. Nepal took it for granted that Nepal or any of its nationals would ever be in a position to invest in Indian projects. Prof S. D. Muni also feels that “the Nepalese side did not seek any reciprocal preference for its participation in India's industrial and natural resources' development since it was not in a position, either financially or technologically, to compete with foreign governments and agencies in India”.¹³ Similar kind of naivety or ignorance can be seen also in what B. P. Koirala, who was Nepal's Prime Minister when the Gandak Agreement was signed in 1959, says in his autobiography. He says,

I called some engineers and discussed it with them. While discussing with them, I said that I would have no objection if they (Indians) get more benefit without causing any harm to us. But our interests must be protected. Our main interests concerned with two things. One was water and the other was electricity. I was of the opinion that we should give them water only in excess of our requirement....¹⁴

In these lines, Mr. Koirala expresses that India can use the water “in excess of our requirement”. He does not think about Nepal's rights, obligations, or the importance of water in the future. Nepal's lack of knowledge also is visible in the behaviour of India. As has been mentioned above, India's Minister, Mr. Guljarilal Nanda, went to Nepal on 24 April 1954 with the draft of the Koshi Treaty, and intended to get Nepal's approval and return back the same day. However, he had to stay there one night, as the treaty could be signed only on 25 April.¹⁵

Nepal also lacked expertise in water law and engineering. Nepal did not have any lawyers who had knowledge about international watercourse law. In fact, this sector did not have any priority in the official or private sector. In the realm of technical expertise or engineering, Nepal did not have good engineers who could advise the Government to do or not to do anything. In the lines quoted above, Mr. B. P. Koirala mentions that he had consulted engineers about the draft of the Gandak agreement. But, it seems that the engineers did not give him proper advice, neither from technical nor from practical perspective. It was only after King Mahendra took over the reign in Nepal, and intended to develop hydropower on its own or with cooperation from other countries, countries other than India also, that he sent 250 Nepalese students to study water engineering in India. He tried to develop Karnali project, but as has been discussed in an earlier chapter, it could not be materialised, mainly due to interference and non-cooperation from India.

Nepal's lack of expertise can also be assumed looking at the history of the country's education. The first school in Nepal, the Durbar High School, opened in 1892. This school was only for the

¹² Paragraph (4) of the Letter Exchanged along with the 1950 Treaty of Peace and Friendship. The text can be found, inter alia, in *Dynamics of Foreign Policy and Law* by Prof. Surya Subedi (New Delhi: Oxford University Press, 2005), p. 194.

¹³ S. D. Muni, *India and Nepal: A Changing Relationship* (New Delhi: Konark Publishers) (date of publication not given), p. 42.

¹⁴ See *Autobiography (Aatmabrittanta)* of Bishweshwar Prasad Koirala, Compiled by Ganesh Raj Sharma, (Lalitpur, Nepal: Jagadamba Prakashan, 2055 (1998 AD)), pp. 231-32.

¹⁵ Ajay Dixit, *Water Journey of Two Neighbours* (Kathmandu: Actionaid, Nepal, 2008), p. 25.

children of the ruling Rana elites. It opened for general public in 1902. However, education among the general masses began after 1951, when the country first saw the dawn of democracy. It is natural that a country with such history of education lacked expertise in legal and technical fields till 1950s. This led to the lack of understanding, and conclusion of unequal water treaties.

D. Absence of Informed Population and Civil Society

Beside the lack of awareness and expertise at the governmental/national level, the absence of informed population and civil society organisations also contributed to the conclusion of unequal treaties between India and Nepal. Even today, foreign policy is not a matter of interest or influence of general masses in most of the countries. Governments have monopoly in this area. The level of interest and awareness among the Nepalese population of Nepal in the early 1950s and 60s is not very difficult to assume. Yes, the 1954 Koshi agreement was criticised after it was concluded. But, who were the critics? Mostly political parties and leaders opposing the government, and people with contacts at the higher levels.¹⁶ Even the critics had different motives: some truly criticised the agreements, but some wanted to utilise the occasion to criticise the government or political leadership; and some tried to use the situation to criticise and defy India. Such people had motives other than Nepal's rights and benefits. Gandak Agreement signed on 4 December 1959 also invited criticism in Nepal. Political parties blamed that the agreement was unequal and protected rights of India rather than of Nepal.¹⁷ B. P. Koirala, in his *Aatmabritanta* (Autobiography) mentions that King Mahendra had tried to humiliate him and his Government on the issue of Gandak agreement.¹⁸ Very few common people had interest in, and knowledge about, the Koshi and the Gandak agreements.

Democracy in Nepal, which began with the end of the autocratic Rana rule in 1951, could not continue for long. King Mahendra took the reign of power in 1960, and started active monarchy. Whatever he did for the country, democracy, as we understand it today, and civil societies were restricted. In spite of the underground activities of the political parties, not much awareness was visible among the masses. This trend continued till 1980s, until during the rule of Mahendra's son, Birendra. It was only after 1990 that Nepal has been enjoying democracy, with greater public awareness and mushrooming growth of civil societies.

The effects and importance of public awareness and the role of civil society organisations can be seen very clearly after 1980s. The political movement of 1989/90 greatly contributed to raise public awareness about many issues. It was public outcry, both organised and not organised, that caused, rightly or wrongly, the death of Arun-3 Project in 1995.¹⁹ Such kind of public reaction was

¹⁶ The Koshi agreement was criticised by political parties, including the Nepali congress. Nepali Congress leader Ganesh Man Singh termed this Treaty "a national suicide". Mr. B. P. Koirala said six days before taking up as Prime Minister that Nepal had suffered losses in the Treaty and that his Government would be extremely careful while concluding such treaties. See Ajay Dixit, *Water Journey of Two Neighbours* (Kathmandu: Actionaid Nepal, 2010), pp. 27-28 and foot note 28.

¹⁷ *Ibid.*, p. 30

¹⁸ B. P. Koirala's Autobiography, pp. 232-33

¹⁹ Arun-3 was a 402-MW project in the Arun River in eastern Nepal. It was going to be implemented under World Bank assistance. The project generated huge public debate, both for and against it. The debates revolved around the huge cost of the project, environmental issues, human concerns, seismographic hazards, and many more. Finally, the

responsible in the case of Tanakpur debate as well. By late 1980s/90s, the people had greater awareness and interest in foreign affairs, especially in Nepal's relations with India. Similarly, many NGOs and civil society organisations had become very vocal on such matters. Moreover, it was the result of public awareness and active campaigning of the civil society organisations that Nepal could make the Mahakali Treaty relatively balanced and equal in nature. Even today, the Government of Nepal takes water resource issue with great sensitivity, and thinks not twice but many times, before saying yes on related matters with India. But, it is understandable that the weak Government, without active and informed population and civil society organisations, was forced to sign unequal treaties with India.

E. Minimal Use of Water Resources

Minimal use of water resources, especially electricity and irrigation, is another reason why Nepal did not take water resources or treaties in this area much seriously. As can be assumed, Nepal was in a primitive state in the 1950s or 1960s. Nepal did have very few hydropower plants until 1950s. The 500 KW Pharping hydroelectricity plant was constructed in 1911. Another plant was the Sundarijal plant, which produced 900 KW. The production of these plants was supplied to the rulers of the day, and few roads and areas in Kathmandu. As Mr. Bikas Thapa says, "in spite of the production of electricity from Pharping and Sundarijal plants, the people in a little distance from Kathmandu had to search things with oil lamps".²⁰ Most people used other sources of fuel. Similarly, irrigation system was not developed and used scientifically. Though there were few canal systems, such as the *Chandra Nahar* (Chandra Canal) constructed in 1922 by Prime Minister Chandra Shumsher in the Trijuga River in Saptari district, the utility of canals or irrigation was not felt or realised. Farming itself was primitive and unscientific, and, therefore, it was natural that people did not have much interest in water resources. Moreover the use of electricity and irrigation was expensive for the poor people, who had great difficulty even in meeting their daily necessities and arranging two meals a day. Bikas Thapa highlights this aspect when he says "As the use of electricity was limited, its constituency was also limited. As the per unit price of electricity was very high, the common man and even the middle class people were not in position to use electricity for household purposes. Production of hydropower did not develop in Nepal during the reign of the Ranas because electricity was not used for domestic or agricultural purposes".²¹ Under such a situation, it was natural that the then Government did not realise the importance of water, and concluded unequal treaties with India without any deep consideration or analysis.

F. Reactive Approach of the Nepalese Government

The reactive approach of the Nepal Government is also a reason why Nepal concluded the unequal water treaties with India. The background of the major water treaties reveal that it was only in the case of Sharada Barrage agreement that the two sides held negotiations through exchange of letters from time to time. The agreement was concluded only after the Nepalese side accepted the proposal presented by British India. As has been mentioned in chapter five, British India wrote to the Government of Nepal seeking permission for survey in 1909, which the Nepalese side accepted in 1910. Again there were communications in 1916 and 1920 before finally agreeing to the proposals.

World Bank decided in August 1995 not to finance the Project. See for details "The Death of Arun: Curse or Boon" in Bikas Thapa, *Hydropower in Nepal*, (Kathmandu: Phoenix Books, 2011), pp. 23-71

²⁰ Bikas Thapa, *Hydropower in Nepal*, (Kathmandu: Phoenix Books, 2011), p. 5.

²¹ *Ibid.* p. 3

There were no such communications or negotiations on the Koshi agreement. It was in a way imposed on Nepal as the Indian Minister went to Kathmandu with the draft agreement on 24 April 1954 and returned to Delhi on 25 April, after the conclusion of the agreement. Similarly, there were no serious negotiations on the Gandak agreement either, though it was not concluded like the Koshi treaty. There were more internal discussions than bilateral ones. The issue of Tanakpur is another example of Nepal's reactionary approach. Prime Minister Girija Prasad Koirala agreed to the Tanakpur agreement in a haste, without much bilateral negotiations and internal discussions. People knew about it after he returned from his visit to India.

The Saptakoshi Highdam and Sunkoshi-Kamala Diversion Project, which has remained one of the agenda items in India-Nepal bilateral meetings on water resources, also carries similar story. After Bangladesh and India concluded the Farakka agreement in 1996, the Government of Bihar complained that the agreement would result in reduced water supply from the Ganga River for the state. Following this, the Union Minister for Water Resources, Janeshwor Mishra, reached Patna, the capital of Bihar, and assured the Government and the people of Bihar that the water shortage for Bihar would be compensated by constructing a high dam on the Koshi River in Nepal. Only a few days after this announcement, India and Nepal reached an understanding in January 1997 to conduct a feasibility study of the Saptakoshi High Dam and Sunkoshi-Kamala Diversion Project. Thus, this project, too, came about to meet the water requirements of India, not with any consideration for Nepal.

In this way, all of the water treaties between India and Nepal were proposed by the Indian side, and agreed to by the Nepalese side without preparations, homework and serious bilateral negotiations.

G. Lack of Constitutional Mechanism for Control

Lack of any constitutional provisions to control the Nepalese governments from reaching agreements with foreign countries is yet another reason why Nepal concluded the earlier water treaties with India. Constitutional provisions or requirements for ratification or approval of the treaties could have restricted the contemporary government of Nepal from agreeing to Indian proposals without serious homework. It was only the constitution of Nepal of 1990, promulgated after the popular movement of 1989-90, which made provisions requiring parliamentary ratification on some issues, including the treaties with foreign countries on the sharing of Nepal's natural resources.²² This provision required that the Tanakpur agreement be ratified by the countries parliament, and it generated heated debate in Nepal, and created big problem for the Government. The Interim Constitution of Nepal, 2007, also has made similar provisions. According to this provision, the 1996 Mahakali Treaty was also ratified by the two thirds majority of the parliament.

²² Article 126 (2) of the Constitution of the Kingdom of Nepal, 1990 provided that "The laws to be made pursuant to clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of or approval of treaties or agreements on the following subjects be done by a majority of two-thirds of the members present at a joint sitting of both Houses of Parliament:-

- (a) peace and friendship;
- (b) defense and strategic alliance;
- (c) boundaries of the Kingdom of Nepal; and
- (d) natural resources, and the distribution of their uses."

Nepal has a history of constitutions from 1947, with the constitutional law prepared by Rana Prime Minister, Mohan Shumsher. After that, Nepal saw other constitutions in 1951 and 1961. None of these constitutions had any provision for ratification of treaties on natural resources. It made it easier for the contemporary rulers to agree to agreements proposed by other countries, and, therefore, earlier water treaties with India were also accepted without much internal debate or bilateral negotiations.

H. Electricity-centric Approach of the Nepalese Side

Nepal has been conceiving water treaties from electricity-centric approach. It did not take the Koshi and the Gandak agreements seriously, and agreed to them without preparations. Gradually, a view developed that Nepal can and should export electricity to India. This view got prominence over the years. In 1945, Sir Olaf Caro, Secretary to the British Government said that Nepal's two important exports were soldiers and electricity.²³ B. G. Verghese, the Indian journalist and an expert on water resources, published an article titled "Waters of Hope" on the Hindustan Times of 29 March 1970. In the article, he argued that the electricity produced in Nepal could not be consumed in Nepal, and therefore, needed to be exported to India. King Birendra of Nepal said in 1977 that Nepal's water resources could be utilised by the South Asian region. Thus, the electricity-centric approach gained coin in Nepal, and almost all projects were designed for electricity generation. Other uses of water were not considered much. There is an example of a proper use of water in the USA. The story tells how the people came together, with added support of the Government, in 1930, and how they used water and power for their daily use, and how in a period of 25 years, over 96 per cent of the people were using power for household purposes.²⁴

Nepal, on the other hand, only thought of exporting power to India. It never focussed on meeting domestic power demands, nor of using water for other purposes. The debate still goes on Nepal whether electricity is to be produced for export or for domestic consumption. This one-sided and power-centric approach is also responsible for making Nepal dependent on India and conclude the water treaties.

I. The Absence of any Third Party

Another reason why Nepal had to agree to conclude the unequal treaties with India was the absence any third party in the process. As has been mentioned above, Nepal in the 1950s and 60s was isolated from the outside world, and had meaningful contacts with India alone. It was not member of the United Nations until 1955 nor did it have diplomatic relations with China till that year. It was very natural that other countries had very little influence over Nepal. Even the outer world questioned the very sovereign independence of Nepal as a country. It was because of this reason that Nepal was denied UN membership though it had applied in 1947 itself. It had to convince the international community that it was an independent and sovereign state, that it was capable of conducting foreign policy and that it was a state from the perspective of international law.

The Indus Water Treaty between India and Pakistan, which was signed in September 1960, is a glaring example of the usefulness and effectiveness of the presence of an influential third party. In the 1950s, when it was discussing water relations with India, Pakistan was rather weak from political or economic points of view. Moreover, Pakistan was a lower riparian, and India the upper

²³ Ajay Dixit, *Water Journey of Two Neighbours*, pp. 116-17.

²⁴ *Ibid.*

riparian. In such a situation, it was not easy for Pakistan to get the Indus Treaty in such a balanced form. It was only because of the involvement of the World Bank that the Treaty could be that balanced.

Mr. David Lilienthal, former Chairman of Tennessee Valley Authority, wrote an article in the 4 August 1951 issue of *Collier's*, after his visit to this part of the world. The article titled "Another Korea in the Making?"²⁵ changed the West's understanding of the water issue between India and Pakistan that it was not merely a political issue but more importantly a technical and engineering problem. He recommended that the International Bank for Reconstruction and Development (IBRD), the earlier form of the World Bank, should take up the project. This article triggered the interest of the IBRD. Following many rounds of negotiations, both India and Pakistan agreed on the project with the involvement of the IBRD. It was even more interesting that India, which has been traditionally preferring bilateralism in water resources and has rejected involvement of any third party, agreed to the involvement of IBRD in Indus Water Treaty. As Salman M. A. Salman and Kishor Uprety argue, "India's previous objections to third party arbitration were remedied by the World Bank's insistence that it would not adjudicate the conflict, but instead work as a conduit for agreement".²⁶ At a time of heightened division of the Cold war, Pakistan was a member of the Western Club, with membership of CENTO and SEATO. It had signed Mutual Defence Assistance Agreement with the US in May 1954; and in early 1959, it had concluded a bilateral Agreement of Cooperation with the US (along with Iran and Turkey) which aimed at reinforcing the defensive purpose of CENTO. Thus, in the words of Pakistan's former President Mohammed Ayub Khan, Pakistan was "associated with the United States through not one, but four mutual security arrangements. In this sense, it has been sometimes termed "America's most allied ally in Asia." It is the only Asian country which is a member both of SEATO and CENTO."²⁷ As a close ally of the West of the day, Pakistan was backed by the World Bank also. It decisively contributed to the conclusion of a balanced Indus Water Treaty between India and Pakistan. But, in Nepal's case, it was neither a member of any such power-bloc, nor did it have any influential friend to help it as a third party. It was thus natural that it had to agree to what India proposed to it, and therefore concluded the water treaties as India wanted.

J. India's Highhandedness and Unilateral Behaviour

India's highhandedness and unilateral behaviour are also responsible for making Nepal sign the unequal treaties with India. No undue pressure or highhanded behaviour is seen in the Sharada Barrage agreement, though this is not also an equal arrangement. The Barrage was constructed by the then British rulers with due agreement with Nepal. Other treaties between independent India and Nepal were signed under India's undue pressure or unilateral behaviour. As has been mentioned above, the Koshi agreement was signed after one day's negotiation, without detailed discussions or Nepal's proactive willingness. India's Minister went to Nepal with the draft of the treaty on 24 April 1954, and got it signed on 25th April. India did not think it necessary to consult Nepal in advance or propose to conclude the agreement. In the case of Gandak agreement, too,

²⁵ David B. Lilienthal, "Another Korea in the Making?" *Collier's*, Volume 128, 4 August 1951.

²⁶ Salman M. A. Salman and Kishor Uprety, *Conflict and Cooperation on South Asia's International Rivers*, (Washington DC, The World Bank, 2002), p. 45

²⁷ Mohammed Ayub Khan in "Stresses and Strains" in *Foreign Affairs* (New York, January 1964) <www.foreignaffairs.com/articles/23567/mohammed-ayub-khan/the-pakistan-american-alliance>, assessed on 18 December 2013.

India had made decision long ago, without taking the pain of informing Nepal, or getting Nepal's approval. In fact, India had wanted to develop irrigation facilities from the Gandak River from as early as 1870s. Later, after India's independence, and after the conclusion of Koshi Treaty, India focused its attention on getting Gandak agreement signed. India had been making all arrangements: Dr. Rajendra Prasad, India's then Agriculture Minister, had instructed the Government of Bihar in 1946 to study the possibility of developing Gandak River to irrigate agriculture land in Bihar; after that the Bihar Government had invited Mr. M. P. Mahesh, a senior engineer from Punjab Irrigation Department, who did the study and prepared the blueprint of the Gandak Barrage project; in June 1959, India's Prime Minister, Jawaharlal Nehru, during his visit to Nepal, warned that if Nepal did not cooperate, India would construct Gandak project in Indian territory; and India had put great pressure on Nepal to agree to the project.²⁸ How could Nepal, then, ignore or stand such pressure from India?

The Tanakpur agreement tells another story. As has been discussed in detail earlier, the Tanakpur Barrage was unilaterally conceived by India in early 1980s, the National Hydropower Corporation of India had completed the technical study of the project in 1983, and the construction of the Barrage had been already completed in 1988. It was only after Nepal's objection against India's unilateral move, and also because India had to tie the barrage to high ground in Nepalese territory, that India had to approach Nepal. It was a situation of *fait accompli*; what could Nepal do? Nepal had no option but to agree to India's proposal as a means to minimise damage, and get whatever benefit it could get from the project.

Though Mahakali Treaty is termed as relatively equal and justifiable treaty, the Government of India reportedly put heavy pressure on Nepal to sign the Treaty. According to an email circulated among nepalofficers@yahooogroup.com on 16 October 2007, one of the group members writes about the different behaviours of Nepal's civil servants during their terms of office and after retirement. He writes, "... 2/3 years ago in hotel Yak and Yeti (in Kathmandu), Dr. (Dwarikanath) Dhungel (who was the Secretary in the Ministry of water Resources of Nepal when the Mahakali Treaty was signed) publicly expressed that he was threatened & pressured by former Indian Ambassador K. V. Rajan in Mahakali Treaty case.."²⁹

All these incidents and developments suggest that India used its power to make Nepal agree to the unequal treaties on Nepal's water resources. Similarly, India also took many unilateral decisions and implemented them on its own, without informing Nepal or seeking Nepal's approval, as the situation demanded. On such developments, Nepal was not in a position to stand India's pressure and say 'no' to its proposals. Furthermore, Nepal had neither capability nor alternatives to correct or undo India's unilateral behaviour. Nepal had to look for means to mitigate losses or damages to its interests resulted from India's unilateral behaviour, as has been seen in the case of Tanakpur Barrage. Thus, India's highhandedness and unilateral behaviour were equally responsible in the conclusion of the unequal treaties between India and Nepal.

K. The Nile Syndrome?

Behaviour of states is very much guided and dictated by their national interest. Whatever the philosophy and advocacy of morality and cooperation, national interests and national compulsions

²⁸ See Ajay Dixit, *Water Journey of Two Neighbours*, pp. 30-31.

²⁹ The printed copy of the email is with this author.

decide how states have to behave in the international arena and in dealings with their neighbours. The case of the Nile River can be a case in point.

The Nile River originates from the high mountains of Burundi.³⁰ It is the world's longest river flowing through 4,187 miles and eleven countries: Rwanda, Burundi, Democratic Republic of Congo, Tanzania, Kenya, Uganda, Ethiopia, Eritrea, South Sudan, Sudan and Egypt. It has four main tributaries: the Blue Nile, the White Nile, Atbara and Sobat. Three of these tributaries, except the White Nile, originate from Ethiopia, thus making Ethiopia the single largest contributing country. Ethiopia contributes about 85 per cent of the Nile water. In terms of use, Egypt and Sudan are completely dependent on the Nile for their supplies.

The importance of the Nile River for Egypt is understandable, as it has to depend on it completely for water supply. The Egyptians cannot think of their lives without the River. There are references of Nile and its importance even in Egyptian legends. In ancient Nile, the Nile and its delta were worshipped as a God, the Hapi, who was believed to have come in the form of a frog. A legend in Egypt mentions that Egypt's Sultan sent his ambassador to Ethiopia with a request not to block its water. As the Nile is life-blood for Egypt, there are legends and real stories about Egyptians' fear that the water of the Nile might be obstructed. Therefore Egypt has taken various measures to ensure regular flow of the River into its territory. Egypt, during its colonial period and after, has concluded a number of treaties with a number of countries. In 1891, Egypt's British rulers concluded an agreement with Italy not to obstruct water from Atbara River; in 1902, an agreement was signed between Britain and Ethiopia under which Ethiopia agreed "not to construct or allow to be constructed any work across the Blue Nile, Lake Tana or the Sobat."³¹ In May 1906, Britain and Congo signed a similar agreement not to obstruct the flow from Semliki River³²; in December the same year, Britain, France and Italy reached another agreement in which the three countries agreed to "act together....to safeguard the interests of Great Britain and Egypt... without prejudice to Italian interests"³³. Again in 1925, Britain reached an agreement with Italy under which Italy "recognised the prior hydraulic rights of Egypt and Sudan" and agreed "not to construct on the head waters of the Blue Nile and the White Nile and their tributaries and effluents any work which might sensibly modify their flow into the main river".³⁴ Ethiopia objected to the agreement and wrote to both Britain and Italy objecting to Great Britain for concluding agreement with "another Government regarding our Lake" and to Italy objecting its "intention to exert pressure"³⁵, which called for preliminary examination and, therefore, be taken to the League of Nations.

One of the most important agreements on the Nile River was signed between Egypt and Sudan in May 1929 which stipulated that Egypt and Sudan would annually use 48 and 4 billion cubic metres of Nile water respectively, that the River would be reserved for Egypt during dry season (20 January to 15 July), that Egypt reserved the right to monitor the flow among upstream countries, and that Egypt assumed the right to veto against any project affecting its interests. The 1959 agreement between Egypt and Sudan, however, amended some of the provisions and, *inter alia*,

³⁰ Robert O. Collins, *The Niles*, (Yale University Press, 2002).

³¹ Article III of the Agreement, www.wikipedia.com, accessed on 14 February 2014.

³² Belgium signed the Agreement on behalf of Congo.

³³ www.wikipedia.com, accessed on 14 February 2014.

³⁴ *ibid.*

³⁵ *ibid*

gave Egypt and Sudan 55.5 and 18.5 BCM of water respectively, and allowed Sudan to construct projects in agreement with Egypt.

The history of Nile is an example of the importance of river for riparian countries. The Nile is a life-blood for Egypt. But, it is equally true that it was because of the involvement of Great Britain, as the rulers of colonial Egypt that made Egypt the strongest contender on the waters of the Nile. The power of Egypt compelled other riparian countries to agree to forego their rightful share of the river. There had been instances in which Egypt threatened it would wage war against Sudan and Tanzania to ensure unobstructed flow of the Nile.³⁶ And, the response of weaker upper riparians was, and to a large extent still is, helpless submission. As A Swain and M. El Fadel argue, the other riparian states of the Nile are weak and submissive to Egypt's demands due to political instability poverty in their countries. Their economic development and prosperity may present different scenario. The Nile Basin Cooperative Framework launched by these countries in 2010 is an attempt towards equitable utilisation of the Nile waters.

Can any parallel be drawn between Egypt's behaviour on the Nile and India's behaviour with Nepal on water resources? Historically there are similarities as both have used their power to get undue benefit from their weaker partners. In both cases, might has been proved right, and stronger partner has exerted pressure on the weaker ones to get agreements of its choice. At the same time, modern times have seen the changed contexts: the riparians of the Nile have initiated Nile Basin Initiative whereas India and Nepal have also embarked on a new course of cooperation.

The foregoing paragraphs have shown why Nepal did agree to sign the unequal treaties with India. No regard to for international law, India's power-politics, and Nepal's dependence on India were the main reasons for the conclusions of the unequal treaties. Had either party paid due regard and consideration for international law, the treaties would not have been concluded in the form they have been. Besides, there is no consistency in the approaches taken by different treaties: the Koshi and the Gandak treaties seem to follow the principle of absolute territorial sovereignty,³⁷ as they allow Nepal to withdraw any amount of water from the rivers.³⁸ The Mahakali Treaty, on the other hand, seems to take basin approach. There are many other inconsistencies in the treaties if viewed from the perspective of international law. Similarly, we have seen how India used its power to get the treaties signed. As has been discussed in the chapter on India-Nepal relations in this study, India has traditionally tried to take benefits from Nepal's difficulties and weaknesses. Further, Nepal's overall situation and weaknesses made it very much dependent on India. This dependency also compelled Nepal to reach agreement on the water treaties with India. Nepal's resistance, if any, could have resulted in many other repercussions in bilateral relations, and could have created very difficult situation for Nepal. Therefore, Nepal did agree to proposals as put forth by India.

This chapter identified the reasons why Nepal agreed to conclude the unequal water treaties with India. While doing so, it tried to analyse the domestic situation of Nepal as well as the historical

³⁶ *ibid*

³⁷ For detailed discussion on the approaches, please see Chapter two of this thesis.

³⁸ Article 4 (i) of the revised Koshi agreement reads: "HMG shall have every right to withdraw for irrigation and for any other purpose in Nepal water from the Kosi river and from the Sun-Kosi river or within the Kosi basin from any other tributaries of the Kosi river as may be required from time to time." Article 9 of the Gandak agreement also has similar provision.

background to India-Nepal relations and other factors that were responsible for making Nepal agree to the agreements. Is the situation peculiar to Nepal or it can be applied to other countries? Will the unequal and bitter past of India-Nepal water relationship continue in the future? And, what is the conclusion that we can draw from India-Nepal water relations so far? The following Chapter will make an attempt to answer these questions.

CHAPTER EIGHT

CONCLUSION, GENERALISATION AND RECOMMENDATIONS

Abstract

Water is becoming an increasingly important natural resource. Nepal's abundant waters can be harnessed for mutual benefit of India and Nepal. Upper riparian is considered to have upper hand over the lower riparian, but the earlier water treaties between India and Nepal are examples of unequal treaties. Nepal was forced to sign the unequal treaties due to various reasons, including historical background, Nepal's domestic weaknesses and dependence on India, and India's high-handedness and unilateralism. Based on the study of India-Nepal water treaties, some generalisations can be made which are applicable to other countries in general. The generalisations include, (i) Asymmetric power relation between states can result in unequal treaties; (ii) The unequal nature of relationship can be exacerbated if the small partner is under-developed, politically undemocratic, and economically weak; (iii) Political instability and weak leadership can be easily forced to conclude unequal treaties; and (iv) Democracy, public awareness and vibrant civil society in a country can play a catalytic role in maintaining equal relations with other states. For developing Nepal's water resources for mutual benefit, recommendations for Nepal include recognising water as a vital resource; taking a firm decision on the targeted user of hydropower; developing economic and technical capabilities; paying due regard to international law while signing agreements with foreign countries; revising the Koshi and the Gandak agreements; promoting the involvement of private companies; effectively manage the domestic mess in water resource; promoting public awareness and civil society; and getting rid of ultra-nationalism. Recommendations for India include treating Nepal on the equal footing; taking Nepal's needs seriously; correcting past mistakes; encouraging private companies; and concluding power purchase agreement with Nepal.

Water is one of the most important natural resources in the world. There are water issues in almost all the regions of the globe. Some issues have been resolved amicably, and others have remained contentious. Some issues have been addressed through treaties and agreements and some are still in the process. The growing population of the world, the growing use of water with the increasing industrialisation, and the growing demand due to economic development have greatly increased the overall demand for water for human consumption. On the other hand, the level of water is gradually decreasing. It has made water a precious commodity, and may lead to a situation as Mark Twain suggested: "whisky is for drinking and water is for fighting over".

South Asia, too, has water issues and problems. In this region, India has water-related problems with Bangladesh, Nepal and Pakistan. The Farakka Barrage Agreement signed in 1996, has resolved a long-standing problem for the time being. But, its history is a clear example of Indian unilateralism and many people in Bangladesh still express resentment over India's behaviour with regard to the Farakka Barrage. Another issue of importance for Bangladesh is the River Linking Project of India, which, Bangladesh fears, would divert waters of the Brahmaputra River, thus creating big problem for Bangladesh, a lower riparian. Water is a serious and one of the most important issues between India and Pakistan. The Indus water Treaty of 1960 has been helpful in resolving many of the bilateral problems in water resources. However, Pakistan has grievances over many projects that India has initiated in its territory which, Pakistan feels, may affect

Pakistan's share of water under the Indus Water Treaty. Pakistan has sought legal remedy as provided by the Treaty. The Indus Water Treaty has stood many vicissitudes, and both countries have respected it. Disagreements between the two countries on many issues notwithstanding, the Indus Water Treaty has remained a useful instrument for resolving water issues between India and Pakistan.

Water issues in this region have some specific features. The features include India's high-handedness and unilateralism; asymmetric power-relationship between India and other countries in the region; India's preference for bilateralism and resulting absence of the involvement of an influential third party in the development and management of water-resources; absence of an overarching framework agreement, especially between India and Bangladesh and India and Nepal; extra-sensitivity and narrow nationalism among smaller states over India's involvement and interest; and absence of a regional arrangement for development of water resources in the region.

This thesis has endeavoured to discuss water-relationship between India and Nepal, and to establish that earlier water treaties between India and Nepal are one-sided, and far from equality or equity. In view of the depth of relationship between the two countries, India and Nepal can, and have to, cooperate more positively for the development and management of Nepal's water resources for the mutual benefit of both countries.

Nepal is rich in water resources, with over six thousand rivers and rivulets, and a per capita availability of 10,304 billion cubic metres annually.¹ Nepal's rivers are estimated to have a theoretical potential of produce up to 83,000 MW of electricity and irrigate hundreds of thousands of hectares of land in India and Nepal. They also need to be harnessed to control floods in both countries, which have been causing great damage from time to time. On the other hand, Nepal lacks funds to finance the mega-projects and technical know-how required for the development of big projects on its own. Therefore, Nepal has no alternative but to get the involvement of international community in the development of its water resources.

All the Nepalese rivers flow into the Ganges River in India. The geographical proximity and the flow of Nepalese rivers to the South have made it mandatory for India and Nepal to cooperate in harnessing Nepal's water resources. Moreover, Nepal's landlocked position and its geopolitical location has necessitated closer cooperation and exchanges with India rather than with China on its North. Historically, Nepal has remained closer to India, and its contacts and communication with China and other countries in the world have remained limited due to a number of factors, including Nepal's geographical location, its historical development, political isolation, economic limitations and vulnerabilities. At the same time, northern India, especially the Gangetic plains in Uttar Pradesh and Bihar, are dependent on water flowing from Nepal for irrigation. Therefore, India has deep interest in Nepal's waters. Moreover, India is economically stronger and possesses technological advancement for hydropower generation, while Nepal lacks both. Against such a background, cooperation in harnessing Nepal's water resources is not only imperative but also in the mutual interest of both countries.

¹ Toufik A Siddiqui and Shirin Tahir-Kheli (coordinators and editors), *Water Needs in South Asia: Closing the Demand Supply Gap* (Hawaii: Global Environment and Energy in the 21st Century, 2004), p.8. According to the report, per capita water availability in Bangladesh, India and Pakistan is 10,714; 1,879; and 1,685 BCM, respectively.

Because of the minimal use of water as well as the low level of economic and technological development of India and Nepal, the two countries started cooperation in water resources rather late. Though there were official discussions and communications as early as the 19th century², the meaningful cooperation began with the signing of the Sharada Barrage Agreement in 1920. After that, India and Nepal have concluded a number of agreements on Nepal's water resources. As discussed in previous chapters, the main treaties included the 1954 Koshi Treaty, the 1959 Gandak Treaty, the 1991 MoU on Tanakpur Barrage, and the 1996 Treaty on Mahakali. The Koshi and the Gandak agreements were so unequal and controversial in Nepal that they had to be revised in 1966 and 1964, respectively. The 1991 Tanakpur Barrage agreement was even more controversial. It became a big issue and generated serious debate in Nepal's parliament, and the Supreme Court of Nepal had to give a decision on it. The 1996 Mahakali Treaty is more balanced and provides more equal treatment between India and Nepal. However, this Treaty, too, is not free from controversy.

The earlier India-Nepal water treaties are marked by inequality and unilateralism, and infringe upon Nepal's sovereignty. They are unequal in the sharing of benefits; they have quantified the amount of water or electricity for Nepal but not for India. This gives a sense that India is in a giving position and Nepal is a recipient. India has the "right" to control water in Nepalese territory. Nepalese nationals are prohibited from entering into the project areas and are deprived of fishing rights in Nepalese territories (within two miles from barrage and the head regulator) without the permission of Indian authorities. Nepal cannot divert the water of its river (Gandak River) to another valley in its territory without an agreement with India.³ India has not paid compensation, pending from as early as 1960s. Even after 18 years of signing the agreement, the DPR of the Pancheshwar project under Mahakali Treaty has not yet been finalised. This has substantiated the argument of some persons who say that India's concern is only controlling Nepal's rivers, not developing them.⁴ There are many provisions in India-Nepal water treaties that are difficult to be justified. Saying all this, it must also be mentioned here that the earlier projects were all financed by India. Nepal made no investment, but got some benefits. Thus, the water projects in Nepal were constructed by India for its purpose.

In water resources, geographical feature of a country is supposed to decide the form and level of power vis-à-vis other countries. The upper riparian country has more say in the waters available in its territory. This was very clearly seen during the negotiations and voting on the UN Convention on the Law of the Non-navigational Uses of International Water Courses, 1997. During the voting in the UN General Assembly, 103 countries voted for the Convention, 3 countries (China, Rwanda and Turkey) voted against it, 27 abstained from voting, and 33 remained absent. According to a study, most of the countries that abstained from voting were upper riparian countries.⁵ The strong position of an upper riparian can be seen elsewhere also. In South Asia itself, India's position vis-

² Official relationship between India and Nepal in the area of water resources can be traced back to 1874 when the two countries reached understanding on three *sagars* (ponds) in Nepalese territory (Jamuwa, Siswa and Marthi, in Pehlimaljkhanda, in Kapilvastu district in present-day Nepal). For details, please see Chapter five of this study.

³ Article 9 of the Gandak Treaty

⁴ Bikas Thapa is one to hold such a view. Please see for details, Bikas Thapa, *Nepalma Jalavidhyut* (Hydropower in Nepal) (Kathmandu: Phoenix Books, 2012), pp. 103-43 (p. 141 in particular).

⁵ For details, please see Chapter 2 of this study.

à-vis the two lower riparian states (Bangladesh and Pakistan) has remained stronger. In the case of China and India, the position of China (the upper riparian) visibly seems stronger. However, the situation is different in case of Nepal. If we consider the water treaties between India and Nepal, we get a feeling that India (the lower riparian) has the upper hand over Nepal (the upper riparian). In this case, the geographical feature has not decided the power configuration of Nepal in the area of water resources. India and Nepal, however, have separate story in water resources.

Chapter Six of this study tried to establish that the water treaties between India and Nepal are unequal and unequitable. Chapter Seven made an effort to find answer to the question: why did Nepal sign the unequal treaties with India? As has been discussed in details in that Chapter, there were many reasons that compelled Nepal to conclude the unequal treaties. There were historical and political reasons. Nepal, especially after the Treaty of Sugauli of 1816, became more dependent on India. The Nepalese rulers sought blessings from Indian leadership to sustain their rule, and, at the same time, there was a close relationship between the leaders of the two countries. Under such a situation, it was not easy for Nepalese rulers to disagree to Indian proposals. There were economic reasons. Nepal was very poor and primitive, and needed Indian assistance for almost everything. It had no funds to implement the projects. At the same time, Nepal also lacked awareness about the value and importance of water resources. As Bishweshwar Prasad Koirala has stated in his autobiography, Nepal was ready to give water to India which was in excess to Nepal's needs. This kind of naivety, coupled with a lack of awareness about rights and responsibilities under international law, naturally resulted in the unequal treaties. Besides, there was an absence of informed population and civil society in Nepal. Informed population and civil society can act as pressure groups, and discourage governments from signing unequal treaties with other countries. Their absence gave a kind of free hand and monopoly to government leaders. The minimal use of water resources, such as electricity and irrigation, also contributed to make Nepal sign the unequal agreements. In the absence of a vision for the future, Nepal was content with what it had, and with what it got from the treaties, without any consideration of rights, responsibility and sovereignty. Another important factor was the absence of an influential third party in the conclusion of India-Nepal water treaties. The World Bank played the role of influential third party during the negotiations between India and Pakistan on Indus Water Treaty of 1960. Nepal never felt it necessary to be assisted by a third party. Moreover, India's unilateralism and its preference for concluding such matters bilaterally made it impossible for Nepal to seek any involvement of a third party. Nepal could not resist India's high handedness either. All these factors made Nepal agree to the unequal treaties with India.

Answering Research Questions and Testing the Hypotheses

As mentioned in the first Chapter of this thesis, this study has tried to answer three major questions:

1. Are Nepal-India water treaties based on equal rights and obligations?
2. Why did Nepal agree to conclude unequal treaties with India?
3. Do political system and the level of public awareness impact upon states on matters relating to treaties with other states?

In an effort to find answers to these questions, three hypotheses were proposed, viz.,

1. The water treaties between Nepal and India are not based on equality from the perspectives of international law and prevailing practices.
2. Nepal concluded the unequal treaties with India mainly due to its economic weakness, lack of awareness, and the vested interests of ruling elites. India's power politics and willingness to take advantages from Nepal's weakness also played important role on this matter.

3. Democracy, public awareness, and growing international exposure and interaction help constraining governments from reaching one-sided agreements with their neighbours.

Following the in-depth study and research, this thesis has reached the conclusion that India-Nepal water treaties, especially the earlier ones, are not based on equal rights and obligations; that Nepal was compelled to conclude the unequal treaties with India for many reasons, which have been enumerated in Chapter seven of this thesis; and that prevailing political system, a country's political, economic and other capabilities have direct bearing on the country's capacity to negotiate equal treaties with other countries. Thus, the three hypotheses proposed at the beginning of this thesis have been validated.

Generalisation

The main purpose of this study is, first, to establish with evidence whether or not the water treaties between India and Nepal are equal, equitable and justifiable; and second, to find out why Nepal agreed to sign the unequal treaties with India. Finally, this study aims at generalising the findings, i. e. to develop the findings in the form of a theory. Such a theory has to be general in nature, and should be applicable to other countries of similar nature. The following generalisations can be made based on the findings of this study:

1. ***Asymmetric power relation between states can result in unequal treaties.*** Treaties between a powerful state and a weaker state can be one sided and/or unequal. This is so because a powerful state can exert various forms of its power to compel the weaker state to agree to the unequal treaties, as has been seen in the case of India-Nepal water treaties. India used different forms of power to get the treaties with Nepal signed. Nepal, being weak and dependent on India had not options but to acquiesce with India's demands.
2. ***The unequal nature of relationship can be exacerbated if the small partner is under-developed, politically undemocratic, and economically weak.*** Underdevelopment, undemocratic and irresponsible regimes, and economic weakness of a country can result in the conclusion of unequal treaties with powerful ones. Size of the country or that of its population matters but is not decisive. What is more important is the level of development, nature of government and the level of awareness of the people. There are many countries in the world which are big in size and have considerably big population; but their relations with their developed partners are far unequal in nature. The relationship between many states in Asia and Africa on one side and those in Europe on the other clearly demonstrates how a developed country with informed population, though small in size and population, can rule, override and suppress undeveloped countries. This was, in essence, the main reason why the developed countries could colonise countries which were bigger in size and population. Such a situation leads to the exploitative relationship between the two types of states.
3. ***Political instability and weak leadership can be easily forced to conclude unequal treaties.*** It is not only true in Nepal's case, it is true in other parts of the world. Nepal had to sign the 1950 Treaty of Peace and Friendship with India; the 1954 Koshi Agreement and the 1959 Gandak Agreement. These were the periods when Nepal was politically instable. Nepal's ruling family of the Ranas were at the deathbed of their oligarchic rule when the

1950 treaty was signed. Moreover, Nepal's situation was instable and volatile during the whole of 1950s when the two water treaties were signed. Another glaring example is the Tanakpur Agreement of 1991. This was in the aftermath of India's economic blockade of Nepal imposed in 1989, and Nepal's first democratic Government after the 1989/90 movement. Another example can be seen in the conclusion of the agreement on Lesotho Highlands Water Project (LHWP) between Lesotho and South Africa in 1986.⁶ Some have even tried to draw a parallel between Nepal's signing of MoU on Tanakpur in 1991 (following Indian blockade of 1989), and the conclusion of the agreement on LHWP following the military coup in Lesotho in 1986.⁷ In contrast to Nepal's situation in 1950s and 1991, the situation in 1996 was more stable with established democratic Government led by Mr. Sher Bahadur Deuba. The result was the Mahakali Treaty which is so far the most equal treaty between India and Nepal.

4. ***Democracy, public awareness and vibrant civil society in a country can play a catalytic role in maintaining equal relations with other states.*** Democratic polity, informed and aware population and a vibrant civil society are assets of a country. They may be obstacles for autocratic or dictatorial regimes, but ultimately they can contribute to strengthening the power of a states. If the governing regime is democratic, pro-people and responsive to people's aspirations, it can take great strength from its population and civil societies. There are a number of examples all over the world that great revolutions were inspired by ideas and people's aspirations for freedom and human rights. Free societies and informed population can not only threaten the dictators, they also can defend the rights of their country in the realm of international community. Besides, they can also play a role of pressure group and dissuade their government machinery from reaching agreements with other countries which are detrimental to the interest of the nation. In Nepal's case, too, the treaties of 1954 and 1959 can be cited as examples of agreements concluded by autocratic or inexperienced regimes. However, the situation in the 1990s, when the Mahakali Treaty was concluded was quite different. The Nepalese people were far more aware of the affairs, both domestic and international; the civil society had grown really vibrant which could really affect public decisions and pressurise government in various ways; independent media did play equally important role in informing the public and discouraging government from reaching any unequal agreements with foreign countries. It can, therefore, be argued that Nepal could have resisted the 1954 and the 1959 treaties with India if its people had then been as informed as in the 1990s, and had there been vibrant civil societies in Nepal then. Similar could have been the situation if Nepal had had democratic and responsible government in the 1950s. This aspect has another side as well. Uncontrolled civil society can also be anarchic, disturb smooth functioning of the government, and discourage it from taking even good decisions. However, it can be safely said that free and democratic society,

⁶ Lesotho and South Africa signed the LHPW agreement in 1986, following 30 years of unsuccessful negotiations. The project aims to transfer about 40 per cent of the water in the Senqunyane River to the Ash River in Gauteng Province of South Africa. The project started in 1989 and is to be completed by 2020.

⁷ Aline Baillat, *Hydropolitics in Small Mountainous States, Two cases of Cross-Asymmetries: The Kingdom of Lesotho and the Republic of South Africa (and) The Kingdom of Nepal and the Republic of India* (HEI Publications) (Geneva: Graduate Institute of International Studies, August 2004), p. 32.

informed population and strong and vibrant civil society can play a very effective and catalytic role in maintaining balanced and equal relations with other countries.

Recommendations

As has been discussed above, cooperation in developing and harnessing Nepal's water resources is in the mutual interest of both India and Nepal. There are a number of projects that have been issued licenses for construction for generation.⁸ Similarly, a number of licenses have been issued for the construction of transmission lines.⁹ And, many projects are still open for licenses. The following chart shows the projects for which survey licenses have been issued.

List of Issued Survey Licenses (Above 100 MW), as of 21 May 2014

S No	Project	Capacity (MW)	River	Issue Date	Validity	Promoter	District
1	Upper Karnali	900.000	Karnali	2065-02-05	2069-08-04	GMR, Upper Karnali Hydropower Limited	Achham and Sur
2	Arun 3	900.000	Arun	2065-04-03	2068-10-02	Satluj Jal Vidyut Nigam Limited	Sankhuwasabha
3	Namlan	303.000	Namlan	2066-06-25	2071-06-24	LANCO Infratech Limited	()
4	Lapche Khola	160.000	Lapche	2066-06-26	2071-06-25	Nasa Hydropower Company P Ltd	Dolakha
5	Dudhkoshi-2 (Jaleswar) HPP	138.000	Dudh Koshi	2067-01-16	2071-01-15	Dudhkoshi Hydropower Pvt Ltd	Solukhumbu
6	Dudhkoshi-4(Taksindu) HPP	350.000	Dudh Koshi	2067-01-16	2071-01-15	KVR India Infra Vidyut Ventures Private Limited	Solukhumbu
7	Upper Trishui-2 HPP	102.000	Trishuli	2067-02-12	2071-02-11	Hydrochina Corporation	Rasuwa
8	Karnali -7	330.000	Karnali	2067-02-23	2071-02-22	LANCO Infratech Limited	Achham
9	Thuli Bheri	121.000	Thuli Bheri	2067-02-31	2070-02-30	GAGE Nepal Pvt Ltd	Jajarkot
10	Bheri-1 Hydropower Project	440.000	Bheri	2067-03-03	2070-03-02	KSK energy Venture P Ltd	Rukum
11	Bheri-2 Hydropower Project	243.000	Bheri	2067-03-03	2070-03-02	KSK Energy Venture Limited	Jajarkot and Ruk

⁸ As of 25 May 2014, generation licences have been issued to a total of 92 projects (big and small) with the capacity of 2,407 MW (www.doed.gov.np).

⁹ As of the same date, licenses have been issued for the construction of 157 transmission lines of different lengths and voltage capacities (www.moed.gov.np).

S No	Project	Capacity (MW)	River	Issue Date	Validity	Promoter	District
12	Ghandruk Modi	111.000	Modi	2068-03-01	2071-02-30	Panchjanya Hydropower P Ltd	Kaski
13	Thuli Bheri-1 HPP	110.000	Thuli Bheri	2069-03-05	2071-03-04	Trishakti Urja Pvt Ltd	Dolpa
14	Bheri-3 storage Hydropower Project (BR-3)	480.000	Bheri	2069-05-07	2071-05-06	Sunrise Hydropower P. Ltd	(ajarkot
15	Upper Budhi Gandaki Hydropower Project	254.000	Budhi Gandaki	2069-08-03	2071-08-02	Nauseni Hydro Pvt Ltd,	Gorkha
16	Dudhkoshi Storage	300.000	Dudh koshi	2069-11-22	2071-11-21	Nepal Electricity Authority	Khotang
17	Tamor Storage	200.000	Tamor	2070-04-16	2072-04-15	Nepal Electricity Authority	Panchthar, Taple, and Terhathum
18	Tamor Mewa	101.000	Tamor	2070-11-22	2071-11-21	Spark Hydroelectric Co. Ltd.	Taplejung

Total capacity for 18 projects = 5,543.000 MW. Source: Department of Electricity Department, Kathmandu, Nepal www.doed.gov.np accessed on 25 May 2014.

Cooperation between India and Nepal on the area of water resources is to be exchanged on the basis of equality and equity, without giving rise to any type of resentment in either country. For this, both sides have to review the situation so far, and remodel their approaches. The following recommendations are made for mutually satisfactory development of Nepal's water resources, and equal and equitable sharing of benefits.

A. For Nepal

1. Realise water's importance and initiate its planned development. In Nepal, water is taken for granted, though it is mentioned as one of the vital natural resources in official documents. Water development is a topic for political sloganeering, but its significance as an important national resource is yet to be realised. Thus, without being bullied or misguided by other countries, it has to take its water as its resource that can be harnessed for national development. At the same time, Nepal should also initiate a planned development of its water resources. How much water is required for domestic irrigation, what is the quantum of electricity that can be generated in a given period, and the potentials for financing the projects need to be well planned in advance. After good planning only, Nepal should approach international donors for funding. Saying this does not mean, however, that Nepal can use all the water in its rivers without giving any consideration for legitimate needs and rights of India as a lower riparian.

2. Take a firm decision on the targeted user of hydropower. Nepal can produce abundant hydropower but it has so far not been able to decide for what purpose electricity should be produced. There is a section of people which says that Nepal should produce electricity for

domestic consumption. The other group advocates production for selling power to other countries, especially India. This debate seems not so important from the outside, but in reality it has become a big and problematic issue. Production for domestic purpose only may require small projects. On the other hand, if electricity is to be produced for export, large projects need to be taken up. This, on one hand, requires huge amounts of foreign investments and, on the other, requires surety of market. As India may not be willing to purchase power at market price, the power produced in Nepal may be wasted unutilised. India's ongoing practice with Bhutan has complicated the issue. It may be recalled here that Indian officials have been highlighting the need to apply Bhutan model in Nepal also. For Nepal, this is not acceptable. Therefore, Nepal has to decide the targeted user of hydropower, and move ahead accordingly, including concluding power purchase agreement with India.

3. Develop economic and technical capabilities. Nepal must develop its economic and technical capabilities to benefit from its water resources in a true sense. It is true that Nepal is a poor country but it has to commit itself to generate and save financial resources for investing in developing hydropower projects. Deficit can be funded by mobilising foreign investments. Besides, Nepal should also focus on developing its technical capabilities. King Mahendra had initiated the process by sending 250 Nepalese students to study engineering in India, who were to be used in the Karnali project. After that, no such efforts have been made. Nepal should understand that unless it becomes capable economically and technically, it cannot develop its water resources; and will have to look at others for this purpose.

4. Pay due regards to international law while signing agreements with foreign countries. The water treaties between India and Nepal have not paid any attention to international law in this area. The treaties are marked by India's high-handedness and Nepal's lack of expertise and knowledge in international law. Nepal, therefore, has to develop its expertise in international law, and pay full attention to provisions of international law while reaching agreements with foreign countries. If necessary, services of internationally renowned experts can be sought. It will help make the agreements balanced and, at the same time, contribute to strengthening Nepal's sovereignty.

5. Try to revise the Koshi and the Gandak agreements. It would be appropriate for both India and Nepal to again revise the Koshi and the Gandak agreements. These are the two agreements which have been most controversial in Nepal. Sharing of benefits may be reviewed, and made more equitable. Most importantly, Nepal should be allowed to control the barrages constructed in its territory and also to regulate water according to requirements. The present arrangement, which has allowed India to control water and barrage in Nepalese territory, has created humiliation for Nepalese nationals, and has created floods in Nepal during rainy seasons and draughts in the winter. Revision of these treaties could give a good message for the people of both countries, and indirectly contribute to enhanced cooperation in other projects.

6. Promote the involvement of private companies. The problems being faced on India-Nepal water resources is, basically, the problems between the governments. The involvement of private sector can greatly help minimise the problems. Private companies are driven by their interest of making profit, and are very less concerned with the issues of nationalism and dominance. There are a number of foreign companies, including Indian, which have acquired

licenses to survey and execute hydropower projects in Nepal. The governments may create conducive atmosphere for the private companies to work smoothly. Many Indian companies have been issued licenses though they are yet to start the construction of projects. India's GMR Group and Sutlaj Jal Vidyut Nigam, for example, have been awarded the contracts of Upper Karnali and Arun 3rd projects, respectively.¹⁰ The Government of Nepal must make sure that the companies are allowed to work without any problem, including disturbances from individuals and/or groups and bureaucratic red-tapism. Nepal should further encourage companies from other countries to invest in Nepal, which Nepal has already done. It would reduce Indian monopoly and dominance.

7. Effectively manage the domestic mess in water resources. If studied seriously, Nepal's water-resource regime is an example of mismanagement. Individuals and companies with vested interests have secured licenses; the license-holders have not initiated their work for many years; they are just trying to make money by selling licenses to other actors. There is a popular saying in Nepal that most individuals and companies have kept the rivers in their bags, meaning holding licenses without executing projects. Again, there are other pressure groups which have forced or convinced the contemporary ruling elites to make arrangements for benefits of certain companies, at the cost to the country. A great mafia-dom is active in this field. The Government of Nepal must control such unwanted practices.

8. Promote public awareness and civil society. Informed people and vibrant civil society are strengths of any country. They can advise the Government to take a course, or put pressure on the Government not to take a decision. In the long run, they can be real asset of the country. Nepal, too, should promote public awareness in the area and also help the civil society in developing itself. Democratic regime, rule of law, strong but responsible government, etc. can contribute to creating such an atmosphere.

9. Get rid of ultra-nationalism. Equally important issue is the feeling of ultra- and narrow-nationalism among certain sections of Nepalese society. Underpinned by bitter experiences of the past, such sections have been very vocal against India. They see Indian involvement in any area with suspicion, and disturb operation of projects. Such individuals or groups have been equating nationalism with anti-Indianism. There are many examples. Nepalese individuals and groups must get rid of such feelings, and start working in the spirit of mutual benefit.

B. For India

1. Treat Nepal on the equal footing and share benefits equitably. India should treat Nepal on equal footing as a sovereign state, and refrain from temptations to extract undue and unreasonable benefits from its smaller neighbour. Various examples, including the 1950 Treaty of Peace and Friendship, the water treaties on Koshi and Gandak Rivers, the 1965 MoU on military modernisation, the draft of the treaty proposed by India during the political movement in Nepal in 1989/90, the Tanakpur Agreement of 1991, etc. have generated suspicion among the Nepalese people as regards India's intentions and behaviour vis-à-vis Nepal. Treating

¹⁰ Nepal's Ministry of Water Resources signed MoUs with GMR-ITD Consortium and Sutlaj Jal Vidyut Nigam Ltd. on 24 January and 2 March 2008, respectively. The MoUs are available at www.moen.gov.np.

Nepal as an independent state and on equal footing as provided by international law would greatly contribute to promoting cooperation in water resources.

2. Take Nepal's needs seriously. India should take Nepal's needs more seriously. The past experiences have shown that India takes Nepalese needs and requirements for granted. It has appeared in the sharing of benefits, inundations along the border due to Indian constructions, emphasis on applying Bhutan model in the development of Nepal's water resources, etc. are some of the examples of lack of consideration for Nepalese sentiments. India should reverse this trend.

3. Correct past mistakes. India should be ready to correct past mistakes, including those on Koshi, Gandak and Tanakpur agreements. Therefore, these agreements should be revised giving control to Nepalese authorities in the installations on Nepalese soil. This would address the problem of suspicion among the Nepalese people and make cooperation in water resources meaningful for both sides.

4. Encourage private companies. Governments' monopoly and control have created problems in smooth exchange of cooperation between India and Nepal. Therefore, India should encourage its private companies to invest in Nepal. There are many big companies in India which have capacity and willingness to benefit from investment in Nepal's hydropower development. Encouragement from the Government would give them a very good signal. Few companies have already got involved in Nepal. Government encouragement would take many more companies to Nepal.

5. Effectively implement the Power Trade Agreement. India and Nepal concluded a Power Trade Agreement on 21 October 2014. It is an important agreement because it opens doors for developing hydropower in Nepal not only by Indian but foreign companies as well. Under the agreement, electricity produced in one country can be exported to another country by public and private companies. This agreement should be implemented truly in words and spirit. This Agreement is expected to also help address the dilemma in Nepal as to whether power should be generated for domestic consumption or for exports. Increased production of electricity in Nepal would help meet growing demand for power in India on one hand and encourage the production of power in Nepal, on the other.

India and Nepal have to, and can, cooperate meaningfully in the development of Nepal's water resources and utilising them for mutual benefit. Nepal has to develop its capabilities and expertise, and India has to learn to treat Nepal on equal footing. Correcting past mistakes and moving forward in the spirit of cooperation would create a win-win situation for both of them.

ANNEXURES

ANNEX-1: Sarada Barrage Project Agreement between British India and Nepal, 1920

ANNEX-2: Koshi Agreement, 1954

ANNEX-3: Amended Koshi Agreement, 1966

ANNEX-4: Gandak Agreement, 1959 (revised in 1964)

ANNEX-5: Tanakpur Agreement 1991

ANNEX-6: Mahakali Treaty, 1996

SELECTED BIBLIOGRAPHY

Acharya, Jaya Raj. *Yedunath Khanal: Jeevanee ra Bichar* (Life and Thoughts of Yedunath Khanal). Kathmandu: Sajha Prakashan, 2059 V. S.

Aditya Anand (ed.). *The Political Economy of Small States*. Kathmandu: NEFAS, 1998.

Alagh, Yoginder K., Ganesh Pangare and Biksham Gujja (eds.). *Interlinking of Rivers in India: Overview and Ken Betwa Link*. New Delhi: Academic Foundation, 2006.

Alam, Imtiaz (editor and publisher). *Water Issues in South Asia*, Vol. 8. Lahore: South Asian Journal, April-June 2005.

American Journal of International Law, various issues.

Annan, Kofi. *In Larger Freedom: Towards Development, Security and Human Rights for all* (the Secretary General's report to the United Nations General Assembly). New York: United Nations, 21 March 2005.

Baillat, Aline. *Hydropolitics in Small Mountainous States*. HEI Publications Working Paper. Geneva: Graduate Institute for International Studies, 2004.

Barua, Pradeep. *The State at War in South Asia*. Lincoln: University of Nebraska Press, 2005.

Bastola, Surya Nath. *Water Resource Development of the Mighty Himalayan Rivers*. Kathmandu: Sunil Bastola, 1997.

Bhasin, Avatar Singh (ed.). *Documents on Nepal's Relations with India and China 1949-1966*. Delhi: Academic Books, 1970.

_____. *Nepal's Relations with India and China: Documents-1947-1992* (Vol. 1 & 2). New Delhi: Shiva Exim Pvt. Ltd., 1994.

Bourne, Charles B. "Nepal's International Water Resources and International Law". Report No. 6/4/280696/1/1 Seq. No. 492. Kathmandu: Water and Energy Commission Secretariat, 1996.

Bruns, Bryan Randolph and Ruth S. Meinzen-Dick (eds). *Whose Water is It Anyway?* Quick Silver Drive, Sterling: Stylus Publishing LLC. 2000.

Burchill, Scott and Andrew Linklater. *Theories of International Relations*. New York: St. Martin Press, 1996.

Cheema, Pervaiz Iqbal, Rashid Ahmad Khan and Ahmad Rashid Malik (eds.). *Problems and Politics of Water Sharing and Management in Pakistan*. Islamabad: Islamabad Policy Research Institute, 2007.

Chellaney, Brahma. *Water: Asia's New Battleground*. Noida, India: Harper Collins Publishers, India, 2011.

Cockcroft, James D., Andre Gunder Frank and Dale Johnson, (eds.), *Dependence and Underdevelopment*, Garden City, New York: Anchor Books, 1972.

Dhar, P. N. *Indira Gandhi, the 'Emergency', and Indian Democracy*. New Delhi: Oxford University Press, 2000.

Dhungel, Dr. Dwarika Nath and Shanta B. Pun. *The Nepal-India Water Relationship: Challenges*. Springer Science + Business Media B. V. 2009

Dixit Ajaya. *Dui Chhimekiko Jalayatra* (Water Journey of two Neighbours). Kathmandu: Actionaid Nepal and Nepal Water Conservation Foundation, 2002.

Dixit, Ajay and P. Adhikari. "Nepal: Ground Realities for Himalayan Water Management" in *Disputes over the Ganga: a Look at Potential Water-Related Conflicts in South-Asia*, eds. Bhim Subba and Kishor Pradhan. Kathmandu: Panos Institute South Asia, 2004.

Ferraro, Vincent. *"Dependency Theory: An Introduction"*. South Hadley: Mount Holyoke College, July 1996.

Galtung, Johan. "A Structural Theory of Imperialism", in *Journal of Peace Research*. Oslo: International Peace Research Institute, 1971.

Ghoshal, Baladas (ed.). *Diplomacy and Domestic politics in South Asia*. New Delhi: Konark Publishers Pvt. Ltd., 1996.

Ghulati, Niranjana N. *Indus Water Treaty: An Exercise in International Mediation*. Bombay: Allied Publishers, 1973.

Government of India and His Majesty's Government of Nepal. *Agreement for Development of Irrigation, Drinking Water Supply and Power*. Kathmandu: 4 March 1959. Available at India's Ministry of External Affairs' website, <www.mea.gov.in>.

Government of Nepal, Ministry of Water Resources (comp.). *Treaty and Exchange of Letters between His Majesty's Government of Nepal and the Government of India on Sarada Barrage, Tanakpur Barrage and Pancheshwor Multipurpose Project*. Kathmandu, 1997.

The Government of Pakistan and the Government of India. "Treaty between the Government of Pakistan and the Government of India concerning the Most Complete and Satisfactory Utilisation of the Waters of the Indus System of Rivers" (Indus Water Treaty). Karachi: 19 September 1960. Available at www.mea.gov.in

Gyawali, Dipak. *Water in Nepal*. Kathmandu: Himal Books and Panos South Asia with Nepal Water Conservation Foundation, 2001.

Gyawali, Dipak and Ajaya Dixit. 'How Not to Do a South Asian Treaty'. *Himalayan Magazine*, ed. and pub. Kanak Mani Dixit, Vol. 14. Kathmandu: April 2001.

_____ "Mahakali Impasse and Indo-Nepal Water Conflict". *Economic and Political Weekly*, vol. 34, No 9 (27 February 1999).

Himali, Chetendra Jung. *Across the Mahakali* (in Nepali, *Mahakali Waari, Mahakali Paari*). Kathmandu: Patriotic Democratic Forum Nepal, 2001.

His Majesty's Government of Nepal and the Government of India. *Agreement on the Gandak Irrigation and Power Project*. Kathmandu: 4 December 1959. Available at India's Ministry of External Affairs' website, <www.mea.gov.in>.

Hydro Nepal, Journal of Water, Energy and Environment, Kathmandu. Various issues available at www.nepjol.info

IDS Task Force Report. *Water Security for India: The External Dynamics*. New Delhi: Institute for Defence Studies and Analysis, 2010.

Institute of Foreign Affairs. *Security in South Asia* (Policy Study Series-2). Kathmandu: Institute of Foreign Affairs, May 2001.

Israel's Policy on the West Bank Water Resources. Prepared for, and under the Guidance of, the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People. New York: United Nations, 1980.

Iyer, Ramaswamy R. "Water in South Asia: A Tour D'horizon". Available at <www.cprindia.org/admn/paper/pdf>. (Accessed on 20 August 2007).

_____ *Water: Perspectives, Issues, Concerns*. New Delhi: Sage Publications Pvt. Ltd., 2003.

..... *Towards Water Wisdom, Limits, Justice, Harmony*. New Delhi: Sage Publications India Pvt. Ltd., 2007.

Johnson, Jannet Buttolph and Richard A Joslyn. *Political Science Research Methods*. Washington D C: Congressional Quarterly Press, 1995.

Khanal, Yadunath. *Essays in Nepal's Foreign Affairs*. Kathmandu: Murari Prasad Upadhyay, 1988.

_____ *Nepal's Non-Isolationist Foreign Policy*. Kathmandu: Satyal Publications, 2000.

Koirala, Matrika Prasad. *A role in a Revolution*. Lalitpur, Nepal: Jagadamba Prakashan, 2008.

Mearsheimer, John J. *The Tragedy of Great Power Politics*. New York: W.W. Norton and Company Inc., 2001.

Mehta, Jagat. "The Indus Waters Treaty: A Case Study in the Resolution of an International River Basin Conflict". Vol. 12 (1), *National Resources Forum*. New Delhi: February 1988.

Mishra, Dinesh Kumar. "Refugee of the Koshi". *Himal South Asian*, ed. and pub. Kanak Mani Dixit. Kathmandu: August 2000.

Morgenthau, Hans J. *Politics Among Nations* (Sixth Edition). Singapore: McGraw Hill, International Editions, 1997.

Muni, S. D. *India and Nepal: A Changing Relationship*. New Delhi: Konark Publishers (no date of publication given).

_____ "Dealing with a New Nepal" in *The Hindu*. Chennai, India: 15 September 2008.

Noshab, Farzana and Nadia Mushtaq. *Water Disputes in South Asia*, Volume 12, No.3. Islamabad: Institute of Strategic Studies, Autumn 2001.

Observer Research Foundation. *India-Nepal Relations: the Challenges Ahead*. New Delhi: Rupa and Co., 2004.

_____ *ORF Discourse: Water Issues in South Asia* (Discourse by B. G. Verghese), Vol. 5, Issue 8. New Delhi: Observer Research Foundation, 2011.

Pandey, Devendra Raj. *Nepal's Failed Development: Reflections on the Mission and the Maladies*. Kathmandu: Nepal South Asia Centre, 1999.

Parajuli, Umesh (coordinator). *Water Sharing Conflicts between Countries, and Approaches to Resolving Them*. Water and Security in South Asia (WASSA) Project Report. Hawaii: Global Environment and Energy in the 21st Century, 2003.

Pitman, G. T. Keith. "The Role of the World Bank in Enhancing Cooperation and Resolving Conflicts on International Watercourses: the Case of the Indus Basin". *World Bank Technical Papers*. No. 414. Washington D. C.: 1998.

Pun, Santa Bahadur. "Overview: Conflicts over the Ganga?". *Disputes over the Ganga: a Look at Potential Water-Related Conflicts in South-Asia*, eds. Bhim Subba and Kishor Pradhan. Kathmandu: Ratna Pustak Bhandar, 2004.

Rao, A. R. and T. Prasad. "Water Resource Development of the Indo-Nepal Region". *Water Resources Development*, No. 10, 1994.

Rawat, P. C. *Indo-Nepal Economic Relations*. New Delhi: National Publishing House, 1974.

Regmi, Punya P. "Managing Nepal's Water Resources". *The Rising Nepal* (Kathmandu), 12 September 2007.

Rose, Leo E. *Nepal: Strategy for Survival*. Berkley: University of California Press, 1971.

Salman, Salman M. A. "Sharing the Ganges Waters between India and Bangladesh: an Analysis of the 1996 Treaty". *International Watercourses: Enhancing Cooperation and Managing Conflict*. Laurence de Chazournes, 1998.

Salman, Salman M. A. and Kishor Uprety. *Conflict and Cooperation on South Asia's International Rivers: A Legal Perspective*. Washington D. C.: The World Bank, 2002.

_____. "Hydro-politics in South Asia: a Comparative Analysis of the Mahakali and the Ganges Treaties". *Natural Resources Journal*, 1999.

Santos, Theotonio D. "The Structure of Dependence", in K. T. Fann and Donald C. Hodges, eds., *Readings in US Imperialism*, Boston: Porter Sargent, 1971.

Shah, R. B. "Ganges-Brahmaputra: the Outlook for the Twenty-First Century". *Sustainable Development of the Ganges-Brahmaputra-Meghna Basins*. Tokyo: United Nations University, United Nations University Press, 2001.

Sharma, Ganesh Raj (compiled by). *Aatmabritanta of Bishweshwor Prasad Koirala (Autobiography of Bishweshwar Prasad Koirala)*. Lalitpur, Nepal: Jagadamba Prakashan, Lalitpur, Nepal, 2055 (1998 AD).

Shrivastava, L. P. *Nepal at the Crossroads*. New Delhi: Allied Publishers Ltd., 1996.

Sharma, Chandra K. *A Treatise on Water Resources of Nepal*. Kathmandu: Sangeeta Sharma, 1997.

Sharma, Sudheer. *Laboratory: Delhi, the Palace and the Maoists in Nepal's Transition*. Kathmandu: Fine Print, 2070 VS (2013 AD).

Shrestha, Aditya Man. *Bleeding Mountains of Nepal*. Kathmandu: Ekata Books, 1999.

Shrestha, Buddhinarayan. *Knowledge of Frontier* (in Nepali, *Simanako Gyan*). Kathmandu: Navaraj Adhikari, 2008.

_____. *India-Nepal Frontier Dam* (in Nepali, *Bharat-Nepal Seemavarti Baandh*). Kathmandu: Bhoomichitra Company Pvt. Ltd., 2009.

Shrestha, Hiranya Lal. *Kalapani and the Headstart of the Kali* (in Nepali, *Kalapani ra Kaliko Muhan*). Kathmandu: Rastriya Janaparakashan, September 1999.

Shrestha, H. M. and L. M. Singh. "The Ganges-Brahmaputra System: a Nepalese Perspective in the Context of Regional Cooperation". *Asian International Waters: from Ganges-Brahmaputra to Mekong*, eds. Asit K. Biswas and Tsuyoshi Hashimoto. Bombay: Oxford University Press, 1996.

Shrestha, Keshavlal. *Mahakali Treaty and the Question of National Interest* (in Nepali, *Mahakali Sandhi ra Rastriya Hitko Sawal*). Kathmandu: Sumitra Shrestha, 1996.

Sikri, Rajiv. *Challenge and Strategy: Rethinking India's Foreign Policy*. New Delhi: Sage Publications Pvt. Ltd., 2009

Siddiqui, Toufik A. and Shirin Tahir-Kheli (coordinator and editor). *Water Needs in South Asia: Closing the Demand Supply Gap*. Hawaii: Global Environment and Energy in the 21st Century, 2004.

Singh, Richa. *Trans-boundary Water Politics and Conflicts in South Asia: Towards Water for Peace*. New Delhi: Centre for Democracy and Social Action www.udym.org.

South Asian Association for Regional Cooperation (SAARC). "Charter of the South Asian Association for Regional Cooperation". Available at < www.saarc-sec.org>.

_____. SAARC Summit Declarations. Available at < www.saarc-sec.org>.

Subedi, Arun Kumar. *Jal Sapana: About Water and Energy Relations with India*. Kathmandu: Biddhyarthi Pustak Bhandar, Bhotahity, 2015

Subedi, Surya P. "Hydro Diplomacy in South Asia: The Conclusion of the Mahakali and Ganges River Treaties". *American Journal of International Law*, Vol. 93, No. 4. Oct. 1999.

_____. *Dynamics of Foreign Policy and Law: A Study of Indo-Nepal Relations*. New Delhi: Oxford University Press, 2005

_____. (ed.) *International Watercourses Law for the 21st Century: The Case for the River Ganges Basin*. Ashgate Pub. Co.: 2005.

Subrahmanyam, K. *Indian Security Perspective*. New Delhi: ABC Publishing House, 1982.

Sunkel, Osvaldo. "National Development Policy and External Dependence in Latin America", *The Journal of Development Studies*, Vol. 6, No. 1, October 1969.

Swain, Ashok. *Managing Water Conflicts: Asia, Africa and the Middle East*. Routledge, 2004.

Tariq, Sardar Mohamamd. "Indus Waters Treaty 1960 and Emerging Water Management Issues for Pakistan". *Problems and Politics of Water Sharing and Management in Pakistan*. Islamabad: Islamabad Policy Research Institute, 2007.

Tarlok, A. D. "Integrated Water Resources Management: Theory and Practice". *Implementing Integrated Water Resources Management in Central Asia*, ed. P. Wouters. Dordrecht: Springer, 2007.

Thanju, Jeevan P (Editor-in-Chief). *Hydro Nepal*, Journal of Water, Energy and Environment. 52, Shukra Gali, Adwait Marg, Bag Bazar, Kathmandu (various issues).

Thapa, Bhekh B. and Bharat B. Pradhan. *Water Resource Development, Nepalese Perspective*. Bombay: Integrated Institute for Development Studies, Konark Publishers, 1995.

Thapa, Bikas. *Nepalma Jalavidhyut (Hydropower in Nepal)*. Kathmandu: Phoenix Books, 2012.

Thapa, N. B. *Geography of Nepal: Physical, Economic, Cultural and Regional*. Bombay: Orient Longmans, 1969.

Tolba, Mostafa Kamal. "Middle East Water Issues: Action and Political Will". *International Waters of the Middle East*, ed. Asit K. Biswas. Amsterdam: Elsevier, 1994.

Untawale, M. G. *The Political Dynamics of Functional Collaboration: Indo-Nepalese River Projects*. Asian Survey, 1974.

Upadhyaya, Sanjay. *The Raj Lives: India in Nepal*. New Delhi: Vitasta Publishing Pvt. Ltd., 2008.

Upadhyay, Surya Nath. *International Watercourse Law and a Perspective on Nepal-India Cooperation*. Kathmandu: Ekta Books, 2012.

Uprety, B. C. *Politics of Himalayan River Waters: An Analysis of the River Water Issues of Nepal, India and Bangladesh*. New Delhi: Nirala Publications, 1993.

Uprety, Trilochan. *International Watercourses Law and Its Application in South Asia*. Kathmandu: Pairavi Prakashan, 2006.

Verghese, B. G. and Ramaswamy R. Iyer (eds.). *Harnessing the Eastern Himalayan Rivers: Regional Cooperation in South Asia*. New Delhi: Konark Publishers, 1994.

_____. *Waters of Hope: Facing New Challenges in Himalaya-Ganga Cooperation* (4th edition). New Delhi: India Research Press, 2007.

Viotti, Paul R. and Mark V. Kauppi. *International Relations Theory, Realism, Pluralism, Globalism and Beyond*. Allyn and Bacon, 1999.

Wirsing, Robert G. & C. Jasparro. *Spotlight on Indus River Diplomacy: India, Pakistan, and the Baglihar Dam Dispute*. Hawaii: Asia-Pacific Center for Security Studies, May 2006.

Wolf, Aaron. "Water for peace in the Jordan River Watershed", *Natural Resources Journal*, 1993.

World Commission on Dams. *Dams and Development: A New Framework for Decision-Making*. The Report of the World Commission on Dams. London: Earthscan Publications, 2000.

Wouters, Patricia (ed.). *International Water Law: Selected Writings of Professor Charles B. Bourne*. London: Kluwer Law International, 1997.

Yaqoob, Asma. "International River Waters in South Asia: Source of Conflict or Cooperation?". *Regional Studies*. Vol. 12, No. 4. Islamabad: Institute of Regional Studies, 2004.

Zartman, William and Jeffrey Z. Rubin. *Power and Negotiation*. University of Michigan Press. 2002.

Zeitouni, N. and N. Becker. "Water Sharing through Trade in Markets for Water Rights: An Illustrative Application to the Middle East". *Water and Peace in the Middle East*, eds. J. Isaac and H. Shuval. Amsterdam: Elsevier, 1994.