

Towards Conflict Transformation in Nepal: A Case For UN Mediation

The history of the Himalayan Kingdom of Nepal is the history of governmental repression, structural social marginalization, and widespread poverty. The transition to democracy, beginning in 1990, has been accompanied by the parallel emergence of a Maoist insurgency that has been openly fighting the government over seven years. There have been two attempts to negotiate peace – one in 2001 and another in 2003 – and both failed. As the conflict escalates, internal frustration and insecurity mark the daily lives of the majority of the Nepalese people.

This article analyzes the phenomenon of the Maoist movement in Nepal. In spite of the particular ideological and political aspirations of the movement, there seems to be a wider national and international consensus on the legitimacy of some of its demands. Thus, the purpose of this analysis is to explain and interpret the Maoist movement as a manifestation of the weakness of the country's political and socio-economic structures, and to take the opportunity to revisit the question as to why there have not been qualitative changes under the new democratic system of government. The word "opportunity" is emphasized because although "the Maoist insurgency has not -or not yet - degenerated into wider predatory violence as seen in other contemporary conflicts,"¹ under the current political atmosphere, potential exists for further deterioration and degeneration of the conflict. The fact that there has been a relatively short period of armed conflict also gives Nepal an advantage to learn from the successes and failures of other countries facing similar challenges.

Through an overview of the roots and the main features of the ongoing conflict, the role of the main political actors, and the reasons that contributed to the failure of past peace negotiations, it will be argued primarily: 1) in dealing with the insurgency, the government has adopted a military approach that rather leads to what Johan Galtung describes as "the structural violence of status-quo"²; 2) since the Monarchy and the main political parties do not seem to benefit from the incorporation of key Maoist political demands in the negotiations table -namely the creation of a constituent assembly to draft a new constitution- and the status quo rather preserves their political interests, Nepal is not capable at the moment to initiate a genuine peace process without the mediation efforts of the United Nations.

1. Synthesis of the Contemporaneous Conflict in Historical Perspective

The contemporary conflict in Nepal cannot be understood in isolation from the political history of the country prior to 1990, the main socio-cultural dimensions that have characterized the pattern of relations between the members of a heterogeneous society, the unique geographic

¹ Karen Ballentine and Haiko Nitzschke. "Beyond Greed and Grievance Policy Lessons From Studies in the Political Economy of Armed Conflict." *International Peace Academy*, Program on Economic Agendas in Civil Wars, October 2003, p. 7

² Johan Galtung. "Transformation of Conflict in Nepal: A Human Rights Perspective." In Bipin Adhikari ed., Conflict, Human Rights & Peace Challenges Before Nepal. Rishikesh Shaha Memorial Lectures 2003, National Human Rights Commission, Nepal, 2003

features of the country, and the low indexes of human development that point at Nepal as one of the least developed countries of the world.

1.1 Political History Prior to 1990

The establishment of the Rana Dynasty in 1846 marked the beginning of a period of self-imposed isolation and economic stagnation. According to D.B Gurung, this dynasty “maimed and mutilated the nation for 104 years.”³ The Rana regime was overthrown in 1951, with the collaboration between the Nepali Congress Party and King Tribhuven (then exiled in India). In 1959 the first general elections were held, but the following year King Mahendra retook direct control through a bloodless coup.⁴

The 1962 constitution established the so-called *Panchayat System*, notable for its ban on political parties. King Mahendra and subsequently his son, King Birendra, ruled as absolute monarchs until 1990.⁵

1.2 Geographical Features

Some of the causes of Nepal’s social problems can be partly attributed to its remote location and unique geography. The presence of great mountains⁶ in the north, and a veritable jungle in the south, has been a mayor obstacle to communication within the country. The inaccessibility of some of these regions has also minimized the prospects for intra-regional economic integration, and contributed to the isolation of the rural people from the centers of power.

1.3 Inherited Socio-Economic Structures

The constructed caste system with hierarchical levels of membership is rooted in the Hindu religious tradition.⁷ A national legal code established in 1854 assigned each ethnic group to a specific position in the castes hierarchy, regulating the life of the citizens in detailed aspects of their social life. Each community was granted rights and duties; therefore, belonging to one group or another had important political and economic consequences.⁸ Over sixty-one distinct ethnic groups have been identified in Nepal.⁹

The caste system consisted of four main levels: the *Brahmins* or noblemen at the highest level, followed closely by the protectors or warriors (*Chhetris*), then the merchants (*Vaishya*), and the *Dalits*, who were the members of the “untouchable” caste. Although the caste system was

³ D.B Gurung. “Ethnic and Socio-Cultural Dimensions to the Maoist Insurgency: An Overview.” In *Conflict, Human Rights & Peace Challenges Before Nepal*, p. 83

⁴ It is alleged that a timid attempt at land reform by the new Nepali Congress Government provoked the wrath of feudal landlords allied to the Royal palace. See R. Andrew Nickson. “Democratization and the Growth of Communism in Nepal: A Peruvian Scenario in the Making?” *Journal of Commonwealth and Comparative Politics*, vol. 20, issue 2, 1992, pp. 358-360

⁵ D.B Gurung. “Ethnic and Socio-Cultural Dimensions to the Maoist Insurgency: An Overview,” p. 83

⁶ More than two thirds of the country is made up of mountains.

⁷ Originally, individuals were assigned to castes based on their skin complexions; around 800-1000 BC people began to be assigned to castes depending on their birth. See Lara L. Manzione. “Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?” *Brookling Journal of International Law*, vol. 32, issue 1, 2001-2002

⁸ Anne de Sales. “The Kham Magar Country, Nepal: Between Ethnic Claims and Maoism.” *European Bulletin of Himalayan Research*, vol. 19, 2000, p. 44

⁹ Lara L. Manzione. “Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?” p. 210

abolished in 1960 and is now prohibited by the constitution, for groups historically associated with particular castes it has been difficult to lose their family's prior association.¹⁰ It is important to note that the policies of the Rana regime and the *Panchayat* system worked to preserve the caste system of social stratification, clearly favoring the higher castes. Both regimes advocated a policy of "one country, one religion, one nation,"¹¹ which led to the suppression of the native languages and cultures.

1.4 Human Development

The impact of the socio-political system described above is reflected on the low levels of overall human development and the patterns of distribution of economic and political power:

The United Nations Development Human Development Report 2003 places Nepal 142 in the Human Development Index Rank.¹² With a predominantly rural population, it is estimated that the top 5% of the people control 40% of cultivated land, and the bottom 60% only 20% of it. In addition, *Brahmin*, *Chhetri*, and *Newars*,¹³ occupy 48%, 26%, and 15% of office level positions respectively.¹⁴ There are also high levels of illiteracy (adult literacy rate in 1998 was 39.2%), lack of access to basic health services (approximately 5 doctors for every 100,000 people), and approximately 94% of the population is engaged in "subsistence" agriculture endeavors.¹⁵ Finally, to illustrate the high levels of income disparity within the Nepalese society, a study published by the Nepal South Asia Centre estimates that "71 per cent of the wealth... is in the hands of the top 12 per cent of the households, and only 3.7 per cent of the national income reaches the poorest 20 per cent of the country's family."¹⁶

2. Transition to Democracy and Consolidation of the Maoist Movement.

2.1 The Rise of The Maoist Insurgence

The Communist movement¹⁷ has a long history in Nepal. From the beginning it was driven by two major groups: moderates and radicals.¹⁸ This distinction is important because the moderates are found today in the Communist Party of Nepal (Marxist Leninist), whereas the top leadership of today's Maoists is said to have come from a party established by the radicals in 1974 known as the "Forth Convention."¹⁹ Although there were also divisions within the Forth Convention (mostly

¹⁰ Ibid, pp. 211-212

¹¹ D.B Gurung. "Ethnic and Socio-Cultural Dimensions to the Maoist Insurgency: An Overview," p. 84

¹² "Nepal Country Fact Sheet." *UNDP/Regional Human Development Report: HIV/AIDS and Development in South Asia*, 2003, p. 199

¹³ This ethnic group is said to be the original inhabitant of the Kathmandu Valley and seat of governmental power. See Lara L. Manzione. "Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?" p. 212

¹⁴ Subodh Raj Pyakural & Bal Krishna Kattel. "Developing Options for Peace Negotiations" *Human Rights Journal: Informal*, South Asian Human Rights Solidarity, December 2003, p. 48

¹⁵ Lara L. Manzione. "Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?" pp. 214-15

¹⁶ As cited in Smruti S. Pattanaik, "Maoist Insurgency in Nepal: Examining Socio-Economic Grievances and Political Implications." *Strategic Analysis*, Institute for Defense Studies and Analysis, vol. 26, No. 1, January-March 2002. Columbia International Affairs Online, Columbia University Press, http://www.ciaonet.org/olj/sa/sa_jan02pas01.html. (March 20, 2004)

¹⁷ The first Communist Party was established in 1949.

¹⁸ Narayan Khadka. "Factionalism in the Communist Movement in Nepal." *Pacific Affairs*, vol. 68, No. 1, Spring 1995, pp. 55-75

¹⁹ Bipin Adhikari. "The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations," pp. 4-5

pragmatists vs. hard-core extremists), the different political strategies adopted by both the moderates and the radicals suggest that the radicals²⁰ have been more consistent with the political platform behind their participation during the democratic movement. In contrast, the moderates have adopted a rather flexible strategy, now accepting the parliamentary means to expand their power and influence, just as any other regular political party.

In order to understand why the Maoists decided to abandon the parliamentary democratic system, calling instead for an armed revolution, it is necessary to review some events of 1990.

The pro-democracy movement of Nepal was launched on February 18, 1990. Remarkably, behind this movement were not only the political parties united (the Nepali Congress Party and the United Left Front: a coalition of 7 leftist parties), but also the civil society and student movements participated in massive demonstrations against the *Panchayat system*. The movement was called off on April 8, after the King announced the removal of the ban on the political parties.²¹ The coalition between the Nepalese Congress (NC) and the United Left Front (ULF) subsequently announced that the minimum demand for a multi-party system had been accomplished and decided to form part of a interim government composed by members of the NC, ULF, independents, and King representatives. Baburam Bhattarai, current Maoist political leader, criticized the NC-ULF for adopting a “policy of compromise.”²² Similarly, other leftist organizations took up a confrontationist path, criticizing the inclusion of palace nominees. The hard-line parties continued to press for elections to a Constituent Assembly “as a means of delivering a genuine people’s constitution rather than have a document handed down by the ‘establishment’ as was the case.”²³

2.2 Constitutional Gaps

While the 1990 constitution could be considered a “progressive” instrument in the sense that it includes strong provisions against discrimination and an expanded list of civil rights, there are also important contradictions within the constitution that have contributed to the political crisis.

One of the main contradictions is that while freedom of religion is proclaimed, the constitution formally declares Nepal as a Hindu Kingdom and engagement in religious proselytism is prohibited. Another important gap of the constitution is that it does not clearly define the limits of the power of the King: he remains as the Chief Commander of the military, and preserves “emergency powers” that can be exercised on the advise of a Council of Ministers whose majority

²⁰ The armed Maoist faction is today known as the Communist Party of Nepal (Maoist): CPM (M). It could be said that the Maoist credentials apply more to their warfare strategy. Politically, as it is stated in their “Appeal of the Communist Party of Nepal (Maoist)” the party “has been leading the People’s War in order to establish real democracy.” See “Appeal of the Communist Party of Nepal (Maoist) by Prachanda, Chairman of CPN (M), online, http://cpnm.org/new/English/statements/apelal_16march04.htm (April 2, 2004)

²¹ Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations.” In *Conflict, Human Rights & Peace Challenges Before Nepal*, p. 6

²² Padmaja Murthy. “Understanding Nepal Maoists’ Demands: Revisiting Events of 1990.” *Strategic Analysis*, Institute for Defense Studies and Analysis, vol. 27, No. 1, January-March 2003, Columbia International Affairs Online, Columbia University Press, http://www.ciaonet.org/olj/sa/sa_jan03mup01.html (March 17, 2004)

²³ Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” p. 6

is also appointed by the King.²⁴ There are also inconsistencies between the constitution and the ‘civil code’²⁵ of 1963, which contains several discriminatory provisions contradicting some of the new liberties of the 1990 constitution. This contradiction is relevant considering that the constitution and the civil code together constitute Nepal’s national law.²⁶

Similarly, many human rights activists criticize the composition of the government’s administrative system²⁷ as not representative of the population and inconsistent with article 2 of the constitution, which states that Nepal is a multi-ethnic and multi-lingual nation “irrespective of religion, race, caste or tribe.” It is often asserted that *Newars* and members of the former Higher Hindu castes disproportionately hold the majority of government positions.²⁸

It is worth noting that the Maoist demands expressed in 1996 have much in common with the grievances of 1990. Commenting on the “cracks in the 1990 consensus,”²⁹ some analysts argue that the governments since 1991 should have brought dissenting elements into the mainstream so that the insurgency would not have gained the support it did. The following analysis will focus on how, besides the weakness of the 1990 consensus and the constitutional gaps discussed above, the successive governments’ bad performance and deficient response when dealing with the insurgency has also been a major cause behind the rise and consolidation of the Maoist movement.

Shailendra Kumar Upadhaya,³⁰ who was appointed by the government as a peace facilitator for the 2003 negotiations, during a forum sponsored by the Human Rights Commission, made reference about how the lack of freedom of expression and political repression contributed to the rise of the insurgency in Nepal. He referred to Krishna Bahadur (now the Maoist spokesman), who while being a member of parliament for the district of Rolpa, initiated a campaign in favor of improving the basic needs for the communities of that area. When former Prime Minister Koirala (from the NC party) visited the region, there were black flag demonstrations against him.

²⁴ R. Andrew Nickson. “Democratization and the Growth of Communism in Nepal: A Peruvian Scenario in the Making?” pp. 370-371

²⁵ This instrument is based on combination of English common law and Hindu legal concepts. It often codified cultural or religious traditions as law or exceptions to the law. See Lara L. Manzione. “Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?” p. 207

²⁶ For instance, female attorneys have brought cases alleging that the civil laws (e.g. inheritance law) are unconstitutional and discriminatory against women. The Supreme Court has limited to direct the government to review the issue. Another key issue concerns the use of native regional languages for discussions at the local or municipal level. In 1998 the Supreme Court declared that Newari and Maithali languages could not be used as official languages at the local level. This seems to be in contradiction of the Constitution’s provisions recognizing each community’s right to “preserve and promote its language, script and culture.” Ibid, pp. 220-22

²⁷ The Prime Minister presides over a Council of Ministers appointed from members of parliament. The national legislature is bicameral: upper house (60 members: 35 elected by the lower house, 15 elected by heads of local committees, 10 appointed by the King); lower house (suspended since May 2002) 205 members elected from single-member constituencies. See Country Report: Nepal, *The Economist Intelligence Unit*, February 2004, p. 4

²⁸ Lara L. Manzione. “Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?” pp. 229-230

²⁹ Padmaja Murthy. “Understanding Nepal Maoists’ Demands: Revisiting Events of 1990.”

³⁰ Former Minister of Foreign Affairs. He also worked as the Permanent Representative of Nepal to the United Nations.

Consequently, many demonstrators were detained and sent to prison. He argues that the Maoists decided not to contest in the 1994 elections because “they thought it was a farce anyway.”³¹

On February 4 1996, the Maoists submitted to the government a list of 40 demands. The demands are divided in three sections: 1) demands related to nationalism (concerning Indian excesses and expansion over Nepal); 2) demands related to the public and well-being (political demands); and 3) demands related to the people’s living (economic, and social demands.) As it was mentioned before, these demands do not differ from the main complaints expressed after the 1990 constitution was proclaimed. The main demands included the elimination of all the privileges of the Royal family, the drafting of a new constitution through a constituent assembly, guarantees for exercise of civil rights, and basic services for poor rural areas. The Maoist movement formally began with the proclamation of a “People’s War” on February 13 1996, (few days before the deadline for the 40 demands was over) with attacks on police and military installations in 6 districts of remote areas of the west of the country.³²

At the moment it is believed that Maoists operate to varying degrees in 68 of the 75 districts of Nepal. The areas under their influence are mostly backward areas where the reach of the government is difficult. Many of its cadres are drawn from the deprived section, frustrated due to the lack of fulfillment of expectations after the restoration of democracy. Simultaneously, the Maoists have exploited the peasants’ dissatisfaction regarding land ownership in the rural areas where the land is comparatively less productive. They collect funds through tax collection, voluntary donations, extortion from rich businessman, and bank robbery. They have been able to maintain a support structure through the investment of the taxes collected in village development programs in the areas they control. Interestingly, “about 1/3 of the guerrilla squads are woman and every village has a revolutionary women’s organization.”³³

Although the political, economic and social conditions of Nepal in the mid 1990s make it easier to understand the initial success of the Maoist movement, it has also brought much suffering to the population they claim to protect. The presence of forests and the difficult accessibility to the strongholds of the Maoists are advantageous for guerrilla operations; however, the presence of the guerrilla also impedes the development of these regions as the constant clashes with the armed forces paralyze the activities of its inhabitants. In addition, the military and the police often persecute the population of these areas, accusing them for giving alleged support to the guerrillas. As the war goes on, and violence increases with no concrete signs of a possible military or political victory by the Maoists, it could be presumed that the initial enthusiasm with the Maoist movement has diminished. Since the Maoists are increasing their presence throughout the country, they need

³¹ Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” p. 20

³² Ibid, pp. 8-12

³³ Smruti S. Pattanaik, “Maoist Insurgency in Nepal: Examining Socio-Economic Grievances and Political Implications.”

to recruit more guerrillas an one cannot be sure on how many of the new comers are “voluntarily” or “forcibly” recruited by the Maoists.

2.3 Deficient State Responses

It could be said that the governmental response to the Maoist insurgency has been rather incoherent. While it often acknowledges that poverty fuels the insurgency, economic plans for assistance to rural and Maoist affected areas have been temporary setups, without long-term development planning.³⁴ Furthermore, as it will be emphasized later in this section, the military approach also exacerbates the problem. In trying to explain the lack of a coherent response from the government, it is necessary to consider two important points:

First, because of the political instability,³⁵ the governments of the day have become more concerned with their survivability rather than governance. Second, it is important to recall that the parties in power after democracy was restored were mostly concerned with the overthrow of the partyless system, and thus they lacked the policies and programs to deal with the social and economic issues they had to confront. It is also widely recognized that the Nepali Congress Party (NC), who has governed for over 10 out of 12 years of democracy, is often “engaged in power struggle within the party,”³⁶ and corruption scandals.

2.3.1 Military Approach

Some analysts have suggested that the reason why the governmental has opted for a military approach to deal with the Maoist movement is that it is considered an “internal security” problem instead of a “political problem”³⁷ deserving due consideration. The adoption of this approach is particularly worrisome for several reasons:

First, the Royal Nepalese Army (RNA) and police forces have been widely criticized by local and international human rights institutions for being the main source of direct violence. According to the Informal Sector Service Centre (INSEC), a local human rights group, since the civil war started (February 1996) until December 2003, approximately 8,610 people had been killed; 5, 841 of the cases are attributed to the government, and 2, 769 of the cases to the Maoists.³⁸ Amnesty International estimates that approximately 10,000 lives have been lost during the internal conflict; one particularly important aspect of this report is that it suspects that more than 4,000 of the approximately 7,000 killed by state agents were “innocent civilians.”³⁹

³⁴ Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” p. 43

³⁵ The change of government over 10 times in 11 years is a symptom of the prevailing political instability.

³⁶ This article is no longer available online and was sent by request to the author. I want to thank Bimal C. Sharpa, from INSEC Nepal for his collaboration. See Bishnu Raj Upreti, “Underlying Causes of Maoist Insurgency in Nepal: A Brief Analysis.” *Informal*, vol. 16, Issue 3, July 2003

³⁷ Peter Sarlina. “The People’s War? The Resurgence of Maoism in Nepal.” *Harvard International Review*, Spring, 2001, p. 34. This opinion is shared by Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” p. 41

³⁸ Country Report: Nepal. *The Economist Intelligence Unit*, United Kingdom, February 2004, p. 14.

³⁹ “Nepal’s Monarch Seen Coveting Total Power, Supporters of Democracy Discouraged.” *The Washington Times*, February 14 2004, p. A08

Second, after the attacks of September 11 2001, the Maoists are considered as “terrorists” not only by the government but also by the government of the United States, whose increasing military assistance to Nepal is certainly reinforcing the military approach. On November 1st 2003, the US declared the Maoists a threat to US national security,⁴⁰ and when the US assistant secretary for South Asia visited Nepal in December 2003, she assured the government of “continued US support in the war against Maoists.”⁴¹ After the declaration of state of emergency in November 2001, the King issued a Terrorist and Destructive Activities Control and Punishment Act (TADA). This act allows the security forces to “arrest, search, detain, and use the ‘necessary force’ to accomplish the objectives of the act.”⁴²

The third important point related to the military approach is that further militarization of the civilian population is on the government’s agenda. The government security plan, announced in November 2003, includes the introduction of a “civil-military campaign” to fight the Maoists. The government has also announced plans to establish “rural volunteers security groups” and “arm them if needed.”⁴³

To conclude this section, it is important to make some observations regarding the implications of the military approach:

A military approach implies further allocation of the national budget to the military, thus minimizing the prospects and opportunities to invest more in human development projects. For such a poor country like Nepal, this is a step back in the country’s fight against underdevelopment. Another important consequence is that while the ‘national security’ plan gives extensive powers to the military, ironically it creates more insecurity in the conflict-affected areas, as there is more potential for coercion and abuse of power by the military. The fact that the majority of the victims are not even insurgents but civilians, illustrates that the internal war is acquiring the characteristics of a ‘dirty war’ where the main targets are not only the Maoists per se, but also peasants and representatives of leftist organizations, or any civilian called “Maoist” by the militaries based on a rather subjective criteria. Finally, a civil-military campaign can dangerously lead to the appearance of state-sponsored “death squads.” This phenomenon was evident in countries like Somalia, Guatemala,⁴⁴ El Salvador, and now in Colombia⁴⁵ -to name a few- and the outcome has been the ascendancy of violent struggles among numerous localized militias.

⁴⁰ The US placed Nepal in the list of top 6 countries to support for the war on terrorism, and as committed to assist in security intelligence, training and million of US dollars. See Bishnu Raj Upreti, “Underlying Causes of Maoist Insurgency in Nepal: A Brief Analysis.” *Informal*, vol. 16, Issue 3, July 2003

⁴¹ Country Report: Nepal. *The Economist Intelligence Unit*, United Kingdom, February 2004, p. 14.

⁴² Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” pp. 34-35

⁴³ On January 2004 it was reported that the first rural volunteer security group had been formed at Sudama village, Sarlahi district. *Ibid*, p. 9

⁴⁴ In Guatemala the introduction of Civil Defense Patrols (PACS) militarized almost the entire society, and peasants were caught in the middle of the war having no choice but to join the military or the right-wing PACS or the insurgency. See Niraj Dawadi. “The

The bitter lessons of civil-military campaigns to deal with insurgencies in other countries should “warn” Nepal of the consequences of adopting such approach. Peace strategist Johan Galtung has also commented on the dangers of the military approach, arguing “it would no longer be a fight based on contradictions, it would be a fight for *survival*, making it even more zero-sum.”⁴⁶ Even if a full-scale military campaign -aided by voluntary armed civil-military patrols- managed to defeat the Maoist guerrillas militarily, it would not remove the roots of the political and socio-economic problems.

3. Peace Negotiations: Critical Review

3.1 Overview

The 2001 negotiations⁴⁷ (August 30 2001- November 23 2001) and the 2003 negotiations (April 27 2003-August 27 2003) had in common the following characteristics: three rounds of negotiations, cease-fires were agreed until the end of the negotiations, and in both cases the Maoists pulled out of the negotiations unilaterally. A code of conduct was also agreed during the 2003 talks. In both cases, the main demands of the Maoists were: 1) new constitution through constituent assembly; 2) republican state; 3) interim government and release of prisoners. They withdrew when it became clear that the government and the cabinet would not consider the demand for the constituent assembly.

3.2 Analysis of the Main Obstacles to the Political Negotiations

This analysis focuses mostly on the failure of the 2003 talks, as the political outlook had changed significantly by then, indirectly becoming a major obstacle to the negotiations:

3.2.1 The Monarchy

In October 2002, King Gyanendra decided to take direct control of the government after firing Prime Minister Deuba and disbanding the Cabinet. The King has appointed successive governments, allegedly without constitutional authority.⁴⁸ Some critics have described the Royal action as a “Royal Coup.”⁴⁹ Two main consequences derived from this action directly affect the peace negotiations: the political parties are reluctant to participate until parliamentary democracy is restored, and the King can project and retain considerable power with the support of the military.

Conflict and the Peace Process in Guatemala: Lessons for Nepal.” In Bipin Adhikari ed., *Conflict, Human Rights & Peace Challenges Before Nepal*. Rishikesh Shaha Memorial Lectures 2003, National Human Rights Commission, Nepal, 2003, pp 234-251

⁴⁵ In the case of Colombia, the paramilitary forces (AUC) initially a rural-volunteer self-defense group, has become an independent right-wing armed force with close ties to the military; its presence has resulted in increased levels of violence, and has made it difficult for the government to negotiate a peace agreement as now they have to negotiate separate peace agreements with the guerrillas and the paramilitaries.

⁴⁶ Johan Galtung. “Transformation of Conflict in Nepal: A Human Rights Perspective,” p. 131

⁴⁷ See Lok Raj Baral. “Nepal in 2001: The Strained Monarchy.” *Asian Survey*, vol. XLII, No.1, January/February 2002.

⁴⁸ P.M Deuba was dismissed on the grounds of incompetence to conduct elections. The King relied on article 127 of the constitution, which states: “if any difficulty arises in connection with the implementation of this Constitution, his Majesty may issue necessary orders to remove such difficulty and such orders shall be laid before Parliament.” See Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” pp. 1-2

⁴⁹ Karl-Heinz Kramer. “Nepal in 2003: Another Failed Chance for Peace.” *Asian Survey*, vol. XLIV, No. 1, January/February 2004

Regarding the main interests of the Monarchy when it comes to peace negotiations, it does not want “to discuss a peace associated with a loss of Royal power.”⁵⁰ Thus, it will probably remain reluctant to agree to the creation of a constituent assembly that could diminish Royal power or even worst abolish the Monarchy in the future. This probably explains the attitude of the government during the 2003 negotiations. Most observers⁵¹ agree that the Maoists’ preparation in 2003 for the talks were “better” and “more constructive” than that of the government. For instance, in the first round the government’s peace team limited to receive the Maoists agenda saying that they would react later on;⁵² during the second round, the government asked for more time to comment on the Maoist demands. This suggests that the government was negotiating without a concrete plan or vision. Finally, during the third round, the government presented its agenda promising mostly socio-economic reforms, without addressing the political issues raised by the Maoists.⁵³

3.2.2 *The Security Forces*

During the second round the government had promised the Maoists that some of the prisoners would be released and that the army would not be allowed to move within 5 kilometers from their army bases. However, the army generals and the cabinet strongly rejected that agreement on the grounds that there could be other violent groups even if the Maoists respected the cease-fire. There are also allegations that the security forces violated the code of conduct and the agreement for the release of prisoners.⁵⁴ These events raise questions on how far the security forces can go beyond the King’s instructions and control, or whether the King knowingly permitted this type of incidents. The second possibility seems relevant considering that a promise that there would be an “all party monitoring committee for the implementation of the code of conduct in every district,”⁵⁵ never occurred.

3.2.3 *The Political Parties*

A statement by Daman Nath Dhungana, a former member of the Constitution Drafting Commission in 1990 and one of the peace facilitators appointed by the Maoists in 2003, summarizes the basic position of the political parties:

“There are some political parties that are not interested to see the Maoists in the political mainstream. They want peace, they want parliamentary democracy, and they want elections. But they do not want to see the Maoists joining the elections...there is a fear that the Maoists could sweep the elections.”⁵⁶

⁵⁰ Karl-Heinz Kramer. “Nepal – State in Danger? The Political Situation, Security-Political Implication and Perspectives,” p. 2

⁵¹ For instance Karl-Heinz Kramer in “Nepal in 2003”, Bipin Adhikari in “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations” and Padma Khatiwada in “Efforts to Peace and Causes of Failure,” all of them agree on this particular point.

⁵² Padma Khatiwada. “Efforts to Peace and Causes of Failure.” *Informal*, South Asian Human Rights Solidarity, December 2003, p. 62

⁵³ Karl-Heinz Kramer. “Nepal in 2003: Another Failed Chance for Peace,” pp. 45-46

⁵⁴ There were cases of released persons being re-arrested, and also the provision in the code of conduct stipulating that Maoist peaceful activities would not be disturbed was violated when the police interrupted a Maoist mass meeting in Terhathum district, and other peaceful rallies in other places. See Padma Khatiwada. “Efforts to Peace and Causes of Failure,” pp. 62-63

⁵⁵ Ibid

⁵⁶ Bipin Adhikari. “The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations,” p. 23

Currently, the main priority of the political parties is to go back to the situation before the October 2002 Royal coup. They have joined in common cause to protest against the King in the streets. However, as Karl-Heinz Kramer notes, this common movement has not prevented some party leaders to make contradictory statements whenever they see the chance to be nominated by the King to lead a new government.⁵⁷

3.2.4 The Maoists

Although analysts have emphasized that the Maoists were better prepared for the negotiations, it is also suspected that they used the truce as an opportunity to revitalize their military forces and to expand their movement throughout the country. If the enthusiasm with which they promoted their 40 demands in 1996 is compared against their political discourse in later years, and more specifically during the peace talks, it could be said that the most sensitive issue has been the demand for a constituent assembly, with less emphasis on the nationalism-related and socio-economic provisions of their initial agenda. This issue and its possible implications will be addressed in the following section.

4. Conclusion: A Case for UN mediation

Looking back at the events of 1990, it could be said that while the democratic movement succeeded in pressing the monarchy to surrender its absolute political power, it also lost a valuable opportunity to break away completely from the previous system. The fact that the political parties were united at that time and supported by the masses gave them considerable strength to take the upper hand when negotiating the conditions under which they would suspend the demonstrations. Unfortunately, the political parties- driven by a greed for power combined with the absence of predetermined political proposals- easily acceded to the offer of compromise, and the democratic discourse seems today more myth than reality.

There seems to be no question about the need to revise or replace the 1990 constitution. The fact that the King has invoked one of its provisions and obtained again total control points out the need to resolve once for all the issue of distribution of power between the King, the political parties, and the Nepalese people. As it was emphasized in section II, there are also serious contradictions within the constitution that prevent the effective implementation of civil rights. Even if a constituent assembly had been established in 1990, it would have been still difficult to satisfy all the representatives of a heterogeneous society. Nevertheless, the fact that the constitution is not considered to be the product of a representative consensus has seriously undermined the legitimacy of subsequent governments.

⁵⁷ Karl-Heinz Kramer. "Nepal in 2003: Another Failed Chance for Peace," p. 48

As it was emphasized at the beginning of this study, the growth of the Maoist movement can be better understood as a manifestation of the low levels of post-1990 political culture: Nepalese predominant beliefs, attitudes, ideas, and sentiments about the political system of their country.⁵⁸ To perceive the Maoist movement just as a “terrorist” movement trying to impose communism would undermine the fact that most of the points proposed in the 40 points document are in fact the demands of the majority of the society, and they should be addressed as such.

It is important for Nepal to negotiate peace in this moment. As it was emphasized in section III, the continuance of the military approach is particularly dangerous; it creates more violence and rather maintains the status quo. The prolonging of the status quo – in the words of Anup Pahari – “takes both sides further away from their strategic goals”⁵⁹ as they would solely focus on the pursuit of tactical goals. The fact that the Maoists discourse has been focusing lately almost exclusively on the issue of the constituent assembly is perhaps indicating that the movement is now less concerned with other important strategic goals such as the demands related to the well being of the Nepalese people. If negotiations continuously lead nowhere, the Maoists will be more impatient and violent, and as Johan Galtung points out, “Nepal may end up in a Sri Lanka situation, a Guatemala Situation or Israel-Palestine situation.”⁶⁰

The United Nations Secretary General, Kofi Anan, has recently reiterated a UN offer to mediate during the peace process. This offer has resulted in a big debate about whether the UN should play such a role. According to the Nepali Times, the political parties and the Maoists⁶¹ have been very receptive to the offer, but the government has not endorsed it, alleging that “Nepal has not yet exhausted its internal means to deal with the insurgency.”⁶²

4.1 Why Nepal Should Take Advantage of the UN Mediation Offer

Close examination of the events that surrounded the peace talks suggest that Nepal has not had yet a comprehensive peace process, but rather “talks” accompanied by temporary cease-fires. Some of the obstacles to the past negotiations included: 1) the absence of the political parties during the 2003 talks; they constitute one of the three main parties to the conflict and therefore their participation in a peace process is necessary. 2) There was not a monitoring committee supervising the implementation of the code of conduct and the terms of compliance with the cease-fire; 3)

⁵⁸ This definition of political culture was developed by Larry Diamond, in *Developing Democracy: Toward Consolidation*, The Johns Hopkins University, 1999, p. 163

⁵⁹ Anup Pahari. “Negotiating an End to Internal War in Nepal.” The *Kathmandu Post*, February 3-5 2004, p. 3, Available online, <http://www.einaudi.cornell.edu/southasia/conference/index.asp?section=resources> (February 28 2004)

⁶⁰ Johan Galtung. “Transformation of Conflict in Nepal: A Human Rights Perspective,” p. 117

⁶¹ On april 5th 2004 the Maoists issued a press statement welcoming the Un offer: “Having taken the recent appeal of Kofi Annan, the General Secretary of the United Nation, for the peaceful solution of the existing crisis of the civil war in Nepal and the inherent conception as a responsible initiative of the international community, our Party has humbly welcomed it. We have been making public our proposal for the need of mediation of the United Nations on the background of the deception and conspiracy demonstrated by the feudal autocratic old state in the period of past negotiation.” See Communist party of Nepal (Maoist) Central Committee, Press Statement, April 5 2004, online, http://www.cpnm.org/new/English/statements/statement25_03_04.htm (April 6 2004)

⁶² “UN Interested in Mediation.” *Nepali Times*, No. 190, 2-8 April 2004, online, www.nepalitimes.com/issue190/nation_2.htm (April 5 2004)

government's lack of serious preparation for the talks; 4) these three points together created an atmosphere of deep mistrust and confusion, setting an important precedent for future negotiations, regarding the Maoists and civil society credibility in the feasibility of achieving a political negotiation to the conflict. As it has been emphasized before, lack of credibility in a negotiated solution reinforces the status quo, and minimizes the prospect for a positive transformation of the conflict.

The position of each of the parties is clear and very polarized: the Monarchy does not want to lose power and privileges; it may agree to reinstall parliamentary democracy, but it will be probably reluctant to even consider the possibility of forming a constituent assembly. The political parties want to go back to the political system before the 2002 Royal actions; that system benefits them, and they will also probably continue to oppose the creation of a constituent assembly fearing that the power balance could lean towards the Maoists. The Maoists insist with the issue of the constituent assembly and the creation of a republican state.

If the Maoists eventually join the democratic system, in order to maintain popular support, they would have to press to move forward with some of the social and political reforms that they promoted in their 40 demands. In this sense, their inclusion in the political system could be positive. However, if there cannot be real negotiations, they will continue fighting, perhaps just for the sake of fighting. This is because a pragmatic analysis of the situation suggests that there is not a "revolutionary" way out of the conflict: a) the government enjoys the moral and military support from the US; b) the presence of anti-communists; c) the fact that the main opposition party CPN (Marxist Leninist) is not likely to support them as their share in the current political structure could be seriously compromised; d) as the conflict goes on, Maoist supporters realize they do not benefit from this war. All these factors minimize the prospects for a revolutionary solution.

Having said this, there are two main possible scenarios: the status quo parallel with continuous violence or a peace-process. The monarchy and the political parties benefit from the status quo, whereas it goes against the Maoists interests. With increasing military support from the US, the status quo seems to be a sustainable option for the government. Under these circumstances, with a clearly non-negotiable constituent assembly, there could be more talk rounds, but it would be difficult to get the parties to participate in a serious and comprehensive peace process towards conflict transformation.

UN peace facilitators could help the Nepalese to draw up a viable compromise, perhaps engaging the parties and the civil society in "constitution making" as itself a part of the process of conflict transformation.⁶³ They could also help to overcome the problems of mutual distrust, and to

⁶³ This approach to conflict-negotiation has been advocated by a new generation of constitutionalists. See Vivien Hart. "Constitution Making and the Transformation of Conflict." *Peace & Change*, vol. 26, No. 2, April 2001, pp. 153-170

ensure transparency and compliance with the code of conduct. Accordingly, UN resident coordinator in Nepal, Matthgew Kahane, has said that UN help could range from building trust in both sides in order to facilitate the resumption of the peace negotiations.⁶⁴ Unfortunately, the government of Nepal can veto UN mediation because the UN can only intervene if it has the consent of the parties involved.

To conclude, the remaining question would be not whether the UN “should” be involved, but rather “could” it be involved? In this paper it has been argued that a military approach amidst the current political instability only leads to a status- quo that only benefits the monarchy and the political parties. Without the government’s approval, the UN will not intervene. How could the UN possibly intervene then? The answer is perhaps in the hands of the Nepalese people.

During the 1990s the Nepalese society was united protesting in the streets against the *panchayat* system; the sudden compromise between the monarchy and the political parties took the victory of the movement away from them. This time the challenge is bigger as they would have to press both the monarchy and the political parties to fulfill their demands for a constituent assembly or a peace agreement in which they can be involved, perhaps with the mediation aid of the UN. Another possible scenario could be the further polarization between the Monarchy and the political parties, and as a result, another democratic revolution against the autocratic regime. In this scenario, the civil society’s participation will be also determinant in order to make sure that if there is going to be a compromise, they should be included. The Maoists would probably endorse both scenarios, but it would be up to the Nepalese people to make it clear that their support would only be expressed through a democratic framework, conditioned on the inclusion of concrete and viable socio-economic reforms in a new government.

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⁶⁴ “UN Interested in Mediation.” *Nepali Times*, No. 190, 2-8 April 2004

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