
Probing the Indo-Nepal Dispute in the Kali River through International Law: An Unlawful Occupation of the Nepalese Territory?

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Abstract

On 5th September 2019, the House of Representatives of the Government of Nepal endorsed, unanimously, its new political map through a constitutional amendment. The amendment included Limpiyadhura, Lipulekh, and Kalapani, the territory occupied by India since the 1960s, within Nepal's borders. The Government of India claimed that Nepal had claimed 'Indian territory'. In light of this need, this article proposes to probe Nepal's claim of ownership over the Lipiyadhura, Lipulekh, and Kalapani territory through an examination of historical facts, treaties, dialogues, and other relevant pieces of evidence. To do so, first, I examine the role of British colonialism in the present dispute between India and Nepal. In particular, I investigate the circumstances of various treaties, including the Sugauli Treaty, being concluded in 1816. Second, I review documents on Nepal's western border with India and ascertain whether Nepal's claims that the territories have always belonged to Nepal are valid. Third, I set out problems and difficulties that emerged in negotiating with post-independence India. Finally, I test the available options Nepal and India have, under international law and relations, to settle the present dispute. In doing so, I conclude—based on historical facts and several pieces of evidence—that Nepal's claim over the territories is legally credible and valid. Having established that, I argue that India's occupation of the Nepalese territory not only is a minor border dispute but could, arguably, constitute an act of aggression—an internationally wrongful act under international law. To conclude, I propose that the most viable option to resolve the current standoff is through peaceful dialogue and diplomacy, keeping in mind the historically and culturally significant affinities between the two closest neighbours: India and Nepal.

Keywords: Indo- Nepal Dispute, Unlawful Occupation, Border Encroachment, Self Determination, Sovereign Territory.

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1.0 Introduction

Nepal and India are yet to settle demarcation of certain sectors of their border, pending for a long time mainly due to India's show-up of strength in handling negotiations.² Arguably, though the Indo-Nepal relationship is relatively stable, steady, and secure, it has witnessed occasional unfurl of critical junctures; in the past, Nepal was forced to encounter a series of the economic embargo as the key illustrations of occasional breakdowns in relations.³ The problem of demarcating borders between Nepal and India, like between India and its other bordering neighbours, mainly occurs from India's inconsistent policies and approaches to the demarcation of the border-lines with neighbours. While India, on the one hand, prefers to give paramount importance to the *McMahon-line* as the guiding principle in settlement of border disputes with China, it tends, persistently but indirectly, to disregard recognizing the legitimacy of the treaties concerning borders concluded by the British colonial regimes with Nepal, on the other. Without a doubt, the *McMahon-line principle* is a bone of contention between China and India. At the same time, China has uprightly rejected since its inception to accept the legitimacy of the *McMahon-line principle*, India has been upholding its legitimacy firmly till now. The so-called *McMahon-line principle* was the product of the Simla Conference held from October 1913 and July 1914, in which Henry McMahon, the Foreign Secretary of British Government in India, acted as the chief negotiator. Ironically, India has been failing to depart from the British colonial legacy, *the McMahon-line principle*, regarding the demarcation of the border with China. In contrast, it has tacitly and tactically declined to respect provisions of the treaties signed by the

² Toya Nath Baral, 'Border Disputes and Its Impacts on Bilateral Relations: A Case of Nepal India International Border Management' (2018) 1 (1) Journal of APF Command and Staff College 35.

³ Lok Raj Baral, 'Nepal India Relations: Continuity and Change' (September 1992) 32 (9) Asian Survey 815-829.

government of the EIC and Nepal as one of the bases for fixing the borders between two countries. This standing of India seems to be paradoxical and irreconcilable.

The British colonial regime (the government of the EIC) and the Government of Nepal had first negotiated on the issues of borders as early as the beginning of the 19th century. As an outcome of those negotiations, the Treaty on Borders between Nepal and India had been signed on 26th October 1801. The treaty was concluded with the satisfaction of both sides, fully recognizing that the two sides had no problems on the border. Moreover, a measure for negotiating peacefully, to settle disputes if any occur in the future, had been adopted.⁴ The conclusion of this treaty categorically confirms a fact that the two countries had no issues regarding borders at that time. Sooner after the treaty was concluded, however, the colonial regime claimed ownership over certain villages of Nepal (currently lying in the Gorakhpur district of India) which ultimately led to the outbreak of a war between the EIC and Nepal in 1814. This war was fateful for Nepal's future for several reasons; some insidious impacts of the war loom large as of now. The war ended at the annexation of the two major provinces of Nepal to the British colonial regime, namely Garwal and Kumaon. This war was wilfully imposed by British imperialism in Nepal to defeat Nepal as a challenge for its insidious goals of subjugating South Asia. The two annexed provinces of Nepal had been integral parts of the sovereign territory of Nepal, historically; like many Indian states, these provinces had never been princely states. The British invasion of Nepal was a starkly imperialist act, and thus immoral and unjust.

For all reasons, the British invasion was an imperialist onslaught against Nepal's independence, sovereignty, and territorial integrity. The annals of history unfold that the regime was keen, right after its full conquest over India through invasions or violation of treaties with principle states, to seize Nepal as a part of its bigger plan to expand the trade in Tibet. Nepal declined persistently to surrender its national interests in the favour of the colonial regime. With a view to teaching lessons, the regime attempted to invade Nepal as early as 1769, but in vain. The regime had to suffer in that war a massive scale of loss. After that fateful failure, the colonial regime suspended its aggressive actions against Nepal, until the 1814-16 war. The end of the war led to the conclusion of a treaty called the 'Sugauli Treaty'. This treaty has been, since then, a major instrument to define Indo-Nepal borders. Yet, the attitude of India is unfair to the treaty as a core reference to settle disputes on the border between two countries.

⁴ Buddhinarayan Shrestha, 'Nepalko Sima Sambandhi Bibechna' (translation: Analysis Relating to Nepal's Border) in Bharat Bahadur Karki and others, *Nepal, India and China Treaties (2075 B.S)* 25.

The Treaty of Sugauli was signed on 4 March 1816 and was elaborated by a ‘Supplementary Treaty on 11 December 1816’. Primarily based on the Sugauli Treaty, the first ‘Boundary Treaty between Nepal and the Colonial regime’ was signed on 1 November 1860 that demarcated the two countries’ borderlines. In the meantime, the colonial regime returned some lands of Nepal in the Southern-Plain that had been annexed by it as a consequence of the 1814-15 war. After the restoration of these low lands, the southern border-line of Nepal runs through fertile plains, jungles, rivers, and settlements as well, and is popularly called *Tarai*—the low land.⁵ The Mechi River and the watershed of Singalila Range with hills and hillocks stand as the Eastern border of Nepal with India. On the west, the Mahakali River runs as the border-line between two countries. The mainstream of the Mahakali River (the greater Mahakali) originates at Limpiyadhura, an area of the Himalayan range bordering Tibet.

The mission of the demarcating border between India and Nepal has not yet been completed. There are some border-points not settled yet, particularly due to India’s reluctance to do so, which has been driven by an attitude of power-strength, which looms as a policy orientation in its dealing with smaller neighbours. This attitude prevents India from realistically viewing the border-lines settled by the Sugauli Treaty of 1816 signed by the government of the EIC. The problem of fixing the border between Indian and Nepal is perceived rather than being realistic. India after the 1962 war with China is prone to see and treat the border with Nepal as a matter of its security strategy concern. This is unreasonable and unacceptable for Nepal because India under international law has been bound to deal with Nepal independently. The attitude of a certain quarter of Indian political elites ignoring Nepal’s sovereign independent status lies as a problematic factor behind failures in settling some issues of border, which was fully settled during the colonial era. Most unsettled issues of the border between the two countries are new ones, which occurred during India’s post-independence era. The first mission of surveying and demarcation, along with the erection of border pillars, started just after the monsoon season of 1816, leading to the completion of entire border demarcation. Hence, the border between Nepal and India had been fully fixed before India obtained independence.

The mission was reviewed frequently, and the border-lines changed frequently. As mentioned above, the government of the EIC agreed to return certain lands in the days to follow. In the days to come, the boundaries between the two countries had periodically been surveyed and demarcated; the survey and demarcation process continued from 1816 to

⁵ Lok Raj Baral (n 3) 815-829.

1860, and then demarcation was subsequently done in 1882, 1885, 1906, 1930-31, and 1940-41. These surveys and demarcation missions divided the boundaries into nine different sectors. In each sector, the work had been completed and the erection of masonry boundary pillars had been carried out.⁶ Before the independence of India, the government of both countries undertook a regular system of re-surveying and supervision of the border-lines and pillars erected therein. But after 1947, the process of the survey was suspended for an unknown reason until 1981 only when the 'Joint Technical Level Boundary Commission' was formed after a lot of urging from the Nepal side. This delay caused serious harm to the side of Nepal as the Indian side continuously and arrogantly encroached on the borders, thus creating serious disputes between the two countries in several places. The disinclination of the post-independent Government of India to promptly demarcate the boundaries between two countries is indicative of its attitude to implicitly deny the legitimacy of the border settled under the treaty of Sugauli, though this treaty took away two-third of the then territory of Nepal and India occupied silently after independence.

The brief discourse about history above indicates that the problem of the border dispute between contemporary India and Nepal has its roots in the fateful event of the war between Nepal and the EIC and the colonial domination that followed in the days to come. Though Nepal remained independent even after this war, the colonial control over Nepal's politics and foreign policy was huge and suffocating. Unusually enough, the post-independent India hardly changed its policy to Nepal; it preferred to follow the 'colonial legacy' on matters of its relations with Nepal. This legacy has been contributing to the failure to settle disputes in some frontiers between the two countries. As noted before, the post-independent India showed less inclination to explore ways out for amicable settlement of these disputes.

This attitude consists of a state of paradox, indeed. India, on the one hand, has firmly been endorsing the *McMahon line principle* in the demarcation of the boundary, particularly on issues of the border with China. With Nepal, on the other hand, it has been adopting a policy of a 'silent or implicit coercion' by denying to accept the Sugauli and other treaties as the foundation references for settling the border disputes. This kind of attitude and approach first appeared in the 1950 Treaty of Peace and Friendship between the two countries which abrogated all previous treaties, including the Sugauli Treaty. The core intent behind pressing Nepal to sign the treaty in haste—with the Rana government of Nepal which was facing a crisis of dissolution—was to seize the momentum for continued control of India over Nepal's two provinces that had been

⁶ ibid

violently annexed by the former colonial regime. India did have no legitimate claim over these provinces, for they had not been part of British controlled India before the war. Neither these two provinces had been controlled nor ruled by any princely state of India before the colonial occupation of India. Enough to say, the British occupation over these Nepalese provinces automatically ended with the cessation of colonial power in India, the British occupation over Nepal's provinces also automatically ended. However, the 1950 treaty was concluded by India with the fragile Rana regime of Nepal to avoid the return of these two provinces to Nepal.

With the abrogation of the Sugauli Treaty, India had been able to place an implicit claim over Nepal's territory. The abrogation of the treaty could also give the upper-hand to India in matters of fixing the border between the two countries for its pleasure and satisfaction. The intention implies that India is implicitly denying recognizing the border-lines between two countries demarcated by the Sugauli Treaty. The root cause of India's problematic relations with Nepal in a matter of demarcation of the border lies in this very fact. This fact leads us to argue that India has been failing to delineate boundaries with neighbours based on pragmatic negotiations, departing from the colonial legacy. A certain quarter of Indian political elites have persistently tended to resist realizing a fact that 'the British colonial regime' was an imperialist power, and its imperialist and expansionist behaviours had been a factor influencing its relations with neighbouring countries, including the demarcation of the border.

The discourse in this article is, therefore, also inspired by the need of exploring the underlying factors and realities concerning a set of unending border disputes between Nepal and India, particularly the one that has been flared up lately in the Western border of Nepal: i.e. the Kalapani territory (east to the Kali River that originates at Limpiyadhura) in which India has stationed its armed forces engaged in dealing with Indo-China border and skirmishes. This is a regular armed force established to involve in the belligerent activities, if and when they occur. Reportedly, the armed forces first occupied the Nepalese land in the 1960s, with a smaller size in the beginning right after the Indo-China conflict in 1962. This territory of Nepal is under the physical control of India, and there are several attempts to shift the existing Indo-Nepal border-line towards the east through cartographic manipulation.⁷ That said, this article endeavours to enumerate facts and pieces of evidence showing that the north-west border-line between Nepal and India is demarcated historically by the Kali River

⁷ Ratan Bhandari, *Atikraman ko Chapetama Limpiyadhura-Lipulekh* (Limpiyadhura and Lipulekh in Siege of Agression) (Ratna Books 2073 B.S) 19-33.

originating at Limpiyadhura, a place situated in the Himalayan range bordering the autonomous region of China.

This dispute is likely to unleash an additional crisis in the mutual relationship between the two countries, which is not good for them both. The latest activities undertaken by India in the area have flared the issue: publication of a map⁸ claiming ownership of the territory; construction of a road to connect with the autonomous region of China; and the inauguration of the road by the India Defense Minister are responded seriously by the Nepalese population and the government. These activities demonstrate India's persistent attitude of occupying the territory for perpetuity. These activities will have impacts on Nepal's security either. Since the road would be used by India for its security matters with China, the fact will certainly generate impacts on Nepal-China relations also. The activities and attitude of India thus violate the principle of international law founded on Article 2 and 4 of the UN Charter that proscribes acts of aggression from any country. The article, therefore, enumerates and analyses historical documents, survey maps, and other documents, such as the past treaties, showing categorically that the Kali River has been a long-standing demarcation between two countries marking the North-West border between Nepal and India.

The article also argues that no principle of international law recognizes the legitimacy of a claim of succession over the land that was illegally annexed by the colonial power in the past. The colonial occupation, though existed as a fact, is illegal and unjust *ipso facto* and *ab initio*, both legally and morally. The occupation of Nepal's two provinces by the British colonial regime in 1816, through a war of aggression, was an illegitimate and immoral act. The provinces had to be returned by India under Nepal's sovereignty after its independence. But India continued to occupy the territories, which both morally and legally unjustified. This argument follows a principle that India's independence represents the end of the colonial regime in all aspects; hence, it was a breakdown from the past or a breakdown of the history. Hence, independence from the colonial yoke cannot be interpreted as a succession to the past—it is a departure, rather. This principle automatically revives the sovereignty of Nepal over the British annexed territories.

According to modern international law principles and values, the event of independence from colonial rule enabled India to enjoy its sovereign right to self-determination. The end of the colonial regime automatically

⁸ See Survey of India <www.surveyofindia.gov.in/files/Political%20Map%20of%20India> accessed 4 December 2019.

reinstated the ‘right to the self-determination’ of Indian people, thus making them the master of their nation. Yet, independence did not mean that the Indian people obtained the right of self-determination either in the land that did not belong to them. Two provinces of Nepal, namely Kumaun and Garwal, had never been part of the Indian Territory in the past; they were annexed by the colonial regime through a war of aggression. Noticeably, the liquidation of colonial rule in India revived the Nepalese people’s right to self-determination in these two provinces. On the contrary, however, these two provinces of Nepal had been occupied by the post-independent India, as if succession to the colonial regime.

Noticeably, Nepal had a legitimate claim over these two provinces and could have asserted its control by entertaining its physical presence but it did rescind to do so; it failed to claim ownership or the right of self-determination over the land, for an unknown reason. India’s greater military and economic strength might be the main reason. Nepal’s divided politics and the Ranas’ interest to preserve their regime by appeasing the Nehru’s government in India was probably another reason behind inaction to retrieve the lost land. This failure of Nepal does not, however, mean that Nepal did also give up claims to the ‘legitimate border-lines fixed’ by the treaty between Nepal and the British colonial regime in 1816, represented by the East India Company.

Arguably, the liquidation of the British colonial rule over India did also end the illegal British control over Nepal’s territories in Garwal and Kumaun even though the two territories of Nepal continued to remain under the control of India. The situation emerged so mainly because of Nepal’s lack of inclination to assert the right of self-determination over these territories. It is meant that Nepal tacitly accepted the *status quo* in matters of the Western border-lines. It implies that Nepal accepted the borderlines fixed by the Treaty of Sugauli signed in 1816. Consequently, the two provinces remained under India’s control. Nevertheless, a reasonable argument stands true that India’s occupation of these two provinces of Nepal did not occur as an act of succession to the British regime’s unjust occupation. Nepal’s tacit consent to maintain the *status quo* does not imply its renunciation of sovereignty over the said land. Said that the article attempts to justify the legitimacy of the *status quo* in matters of Nepal’s western border-line with India, which has been tangibly demarcated by the historical documents, including the Sugauli Treaty of 1816. The article concludes that, based on these several arguments, the claim of India over the Kalapani area stands against the customary and modern international law and states’ practice and commitment to promote and preserve peace and tranquillity.

The article suggests that India's act of placing armed forces and constructing roads in the territory is a clear instance of aggression against international law founded on the Charter of the United Nations. The act violates the international law principle, mainly because (a) the acts of India violate the historically recognized border-line between the two countries; (b) it uses the territory within Nepal's frontline for stationing and mobilizing armed forces for Indo-China border security, thus giving rise to a critical situation of Nepal's docile strategic balance between two neighbours; and (c) it has been persistently declining to accept Nepal's proposal of negotiation for exploring amicable solution under peaceful mechanisms suggested by the UN Charter. These grounds imply that India is wilfully inclined to continue its acts of occupying Nepal's land on contrary to the established international law principles of non-aggression and legitimate historical documents demarcating the border-line for over two hundred years.

2.0 Nepal-India Dispute: An Issue of not Border Encroachment but Aggression

The Government of India has placed its Indo-Tibetan Border Police Force since 1962 in the area of Kalapani and Lipulekh, lying to the east of Kali River; the mainstream tributary of the greater Mahakali River that originates from Limpiyadhura. This tributary historically demarcates the north-western border-line between Nepal and India since 1816.⁹ Before this year, Nepal's Western frontier embraced the Kumaun and Garwal areas as its integral territories. None of the Indian princely states had ruled these provinces before the East India Company annexed them through brutal war against Nepal. Sometime in the past, both these provinces had been ruled by local lords (*rajās*) as the integral principalities of the greater Nepal, like several other territories. The reunification campaign of Nepal, which began during the 1750s, initiated by the late King Prithvi Narayan Shah, united these two territories like other principalities into the United Kingdom of Nepal.¹⁰

Nepal stood as an important nation throughout the pre-medieval and ancient era. Following the liquidation of the Lichhavi era, Nepal remained fragmented and was divided into several principalities, particularly during the late medieval age. In the Western front, the kingdom of Dullu and

⁹ Indo-Tibetan Border Police Force, 'Origin of ITBP, the 'HIMVEERS' and National Security' <www.itbpolicenic.in/Aboutus_new/history&role/history&role.html> accessed 4 December 2019.

¹⁰ D.B. Shrestha and C.B. Singh, *The History of Ancient and Medieval Nepal in a Nutshell : with Some Comparative Traces of Foreign History* (HMG Press 1972) 90-95.

Simja, ruled by the Malla dynasty, was a reasonably big nation. The frontier of the Malla kingdom had extended far beyond the present border of Nepal (Mahakali River). The Malla kingdom, which was Nepal's territory before disintegration, comprised the two British stolen provinces, and even beyond.¹¹ Adequate concrete proofs are showing that Nepal in ancient and medieval ages had its frontiers extended to the far west, reaching even Kashmir, at some times. Some inscriptions of early rulers of Western Nepal have been found in India¹² showing that both these provinces formed an integral territory of Nepal. As graphically presented by some historians such as Fuhrer,¹³ Atkinson, Keilhron, Bhandarkar, and Baburam Acharya, just to mention a few, prove sufficiently that Nepal's border has sometimes reached Kashmir of present India.¹⁴ All these inscriptions have invariably presented those provinces as part of the Malla kingdom (Nepal). Ram Niwas Pandey, a historian, has carried out an extensive inquiry about the ancient and medieval past of Nepal's Western part. He has vividly presented how prosperous and expanded Nepal's western part was in the past.¹⁵ The documents explored by him also establish the fact that Nepal's reunification campaign was meticulously guided by the historical accounts regarding Nepal's early history. His exploration ably presents that Nepal's army had unified Kumaun and Garwal based on pre-medieval and medieval frontiers of Nepal based on the annals of history.

History proves that the British act of invading those parts of Nepal was purely an imperialist venture; these territories had always been an integral part of Nepal. As such, it was an earnest obligation of India to allow Nepal to peacefully regain ownership over these territories, in the wake of the former's independence. However, India implicitly moved, being guided by a false assumption that it had the right to succeed territorial sovereignty over all territories occupied by the British colonial regime. While doing so, India acted with its colossal military strength built by the colonial regime. On the other hand, Nepal's oligarchic Rana aristocracy, the ruling court of that time, had become weaker for several reasons, including its anti-people governance, moral laxness, corruption, and despondency. Its army was rudimentary, besides a fact that the population of youths had been exhausted during the First and Second World Wars. The Ranas benefited

¹¹ Ram Niwas Pandey, 'The Ancient and Medieval History of Western Nepal' *Ancient Nepal* 45-55 <http://himalaya.socanth.cam.ac.uk/collections/journals/ancientnepal/pdf/ancient_nepal_11_07.pdf> accessed 4 December 2019.

¹² *ibid*

¹³ Alios Anton Fuhrer, *The Monumental Antiquities and Inscriptions : in the North-Western Provinces and Oudh*, v 2 (Indological Book House 1891) 14.

¹⁴ Pandey (n 11) 45-55.

¹⁵ *ibid*

economically hugely by exporting youths to the colonial military in India.¹⁶

Nepal had in that time been experiencing a political upheaval; a popular democratic revolution was swaying the nation, thus pushing the oligarchic regime in the corner of the end. In this awkward political environment, the post-independent government of India meticulously stepped up to 'take benefit by controlling the reign of Nepal' political affairs. For that purpose, the post-independent government, in the initiation and meticulous design of Prime Minister Nehru, enticed, if not forced, the Rana Regime entering into an infamously unequal treaty, namely the '1950 Treaty Peace and Friendship'. This treaty was signed by the Rana Prime Minister of Nepal, in the words of professor Lok Raj Baral, a renowned political scientist, 'for the interests of the rulers, not for the national interests'.¹⁷ From the perspective of success to conclude the unequal treaty, the post-independent Indian government took momentum as an opportunity to take the reign of Nepal's fragile political affairs. It adopted a policy of 'placing Nepal's sovereignty and independence under its guidance'; under its effective control. The post-independent Indian government appreciated and supported the Rana regime for its consent to sign the treaty. Nepalese people's expectation for democratic change was thus minimized, if not destroyed. In the words of B. P. Koirala, the first elected democratic Prime Minister of Nepal in 1959, '... I learned from Shanker Sumsher that Mohan Sumsher had already submitted to India... We got to know that Mohan Sumsher was going to be the Prime Minister of Nepal'.¹⁸ Unusually enough, the Indian Government sent its advisors to each ministry of Nepal. The Chief Secretary of the Government of Nepal came from India, and the advisor of the king came from India.¹⁹ Nepal's zeal of independence and honour of a sovereign nation was thus squeezed, though the treaty enshrined into sweet words like 'respect to Nepalese sovereignty as an independent state'. This principle of 'India Guided Independence' of Nepal was worse politically than that of the control administered by the British colonial regime. In this very unbecoming political situation, Nepal could have no voice regarding the return of the lost provinces.

Subsequently in the adverse geopolitical situation, Nepal tacitly rescinded the claim for regaining the lost territories and forged friendly relations with India. It tacitly consented to the Western border-line demarcated

¹⁶ Yubaraj Sangroula, *Gorkha Brigade: 1814-2014* (Nepali Edition, Lex 2019) <www.ratnabook.com/3002-gorkha-brigade-1814-2014.html> accessed 05 May 2020.

¹⁷ Lok Raj Baral (n 3) 815-829.

¹⁸ Ganesh Raj Sharma, *B P Koirala Ko Aatmabritanta* (An Autobiography of B.P. Koirala) (2nd edn, Addamba Prakashan 1999) 133-140.

¹⁹ *ibid*

following the Sugauli Treaty of 1816, forcing Nepal to accept the Mahakali River as its Western frontier. Nepal also lost its fertile and green southern lowland, namely the Tarai. In this regard, Nepal declined to sign the treaty—Prime Minister Bhim Sen Thapa ignored the treaty with a decision to face whatever comes ahead. Still, a representative of Nepal signed the treaty under the influence of British interlocutors' assurance of favourable treatment.²⁰ Though the war had come to an end through the Treaty of Malaun in 1915, the British colonial regime feared the resurrection of Nepal's strength by military support from the Qing Emperor of China, which arrived at Lhasa from Xian and marched to the South-West. For that reason, the East Indian Company agreed to return certain parts of stolen land in the southern plain (the Tarai) on December 11, 1816. This revision was carried out in the original Sugauli Treaty through a 'Supplementary Treaty'.²¹

According to an established principle, where there is an explicit or defined border-line, no further interpretation or demarcation of the 'border-line' is necessary. But if such a situation does not exist and there are claims and counter-claims on a certain portion of territory or land in the frontiers, thus rendering the relations between two countries as cold, the situation is defined as a border dispute.²² In a general sense, the term 'border dispute' refers to a stalemate between two countries on the demarcation of border-line; in such a situation, the border-lines remain more or less imaginative. The stalemate might have been caused due to real problems in demarcation or might be a result of the interest of domination from one of the countries, which is comparatively stronger in influence and strength—politically, economically, or militarily. In such a situation, the dispute is more psychological and a perceived one in nature. In the past, there had been border disputes between countries where the issue involved was more strategic. The strategic disagreement is generally caused by the importance attached to national security, transit point, and business significance.²³

The border-lines between Nepal-India had been demarcated specifically and, therefore, no need for additional demarcation was required before the British colonial regime ended in India. There have been border-pillars fixed between two countries since 1816; yet, there are several places, after the independence of India, Nepal has been facing encroachment from the Indian side. Reportedly, there are three basic forms of encroachments from

²⁰ 'Secret Letter from Lord Moira, 1 June 1815 to the Bengal Government Secretary' in J. L. Cox, *General List of Papers—Papers Relating to Nepal War* (Indian Office Library 1824).

²¹ Shrestha (n 4) 56-57.

²² Gyanendra Paudyal, 'Border Dispute between Nepal and India' (2013) 1(2) *Researcher: A Research Journal of Culture and Society* 25-48.

²³ Shrestha (n 4) 15.

India in Nepal-India border-lines.²⁴ First, there has been a ten-yard no-man's land between the Indo-Nepal borders maintained traditionally. But, over the years, there has been a constant attempt from the Indian side to disrespect the no-man's land. In several places, the no-man's land has been illegally occupied by Indian citizens, without any efforts from the Indian government to restrain such encroachment. Second, the Indian government has constructed high dams and ascended roads, thus causing Nepal's territory to be submerged and created a swamp-land, which blurs the actual border-line. Third, the Government of India has built its security or custom installations within the traditionally approved or maintained border-line. In such cases, either the border-pillars are illegally, but secretly, removed or erected inside Nepal's territory, or, if the border is naturally defined, shifted the border-line inside Nepal by way of cartographic manipulation. The issue of Limpiyadhura represents the category of the last one, i.e. the cartographic manipulation.

Recently, India published an official map that meticulously incorporated a portion of Nepal's territory within Indian Territory. Some border experts, media, and members of the civil society in Nepal described the act of India as an encroachment of border-line, while some experts of international law in Nepal defined the act as aggression given the principles laid down by the United Nations General Assembly Resolution 3314 (XXIX) (14 December 1974).²⁵ The Resolution defines aggression as 'the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State'.²⁶ The resolution has, in plain terms, identified the act of military occupation as one of the forms of aggression.²⁷ The resolution has been adopted by the General Assembly of the UN for reaffirming the faith of the Member States to the Charter's Article 2 which commits them 'to maintain international peace and security'. To that end, the Article calls for the Member States to refrain from any acts of threat, aggression, or other breaches of the peace. Article 1 (2) of the Charter lays down a fundamental principle obliging the Member States to 'respect the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'. The acts of the Indian Government, by stationing the armed force and constructing the road in the territory controlled by Nepal under the Sugauli Treaty of 1816, clearly violate the international law established by Article 2 of the UN Charter.

²⁴ *ibid*

²⁵ 'Definition of Aggression : General Assembly Resolution 3314 (XXIX)' <https://legal.un.org/avl/pdf/ha/da/da_ph_e.pdf> accessed 23 December 2020.

²⁶ General Assembly Resolution 3314 (XXIX), art 1.

²⁷ *ibid*, art 3(a).

Based on the UN Charter's Article 1(2), the act of India stationing its armed forces within the frontiers of Nepal amounts not only to be an encroachment of the traditionally demarcated border between the two countries but also an attempt of 'colonizing the population of Nepal having been settled in the territory from antiquity'. The act of the Indian Government violates the right of the Nepalese people to self-determination. The act, as such, constitutes a threat to the security of Nepal and the peaceful relations between the two countries. The act of placing troops within Nepal frontier, without the latter's consent, violates Nepal's right to sovereign equality under Article 2(1) of the UN Charter,²⁸ which categorically obliges all the Member States to follow under all circumstances. India, as a member of the United Nations, must respect the principle of sovereign equality in good faith as required by Article 2(2) of the Charter.²⁹ Hence, India must refrain, under Article 2(4) of the Charter,³⁰ in its relations with Nepal from any act that constitutes or is likely to include the use of force against the territorial integrity and political independence. No doubt, the act of stationing the armed forces by India in Nepal's territory within the traditionally and treaty-defined border-line violates the purposes and manners stipulated by the UN Charter under Article 2(4).

The act of India stationing its armed force within Nepal's territory, followed by the publication of an official map incorporating the territory and constructing the road in the territory, with a purpose of linking Indian Territory with Chinese border, violates the Charter-based as well as customary international law principles and rules against aggression. Act of aggression is a State's internationally wrongful act that violates the prohibition of the use of force, and, on the other hand, the conduct of leaders of a State for which they can be held individually criminally responsible.³¹ The latter condition occurs when the unlawful act of aggression is committed, affecting the people's life and property. In such a situation, the act of aggression turns to be a crime of aggression. In the present case, this act of India has so far been limited to the former condition. Allegedly, the forces have harassed Nepalese people during

²⁸ The Organization is based on the principle of the sovereign equality of all its Members.

²⁹ All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

³⁰ All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

³¹ Anita Ušacka, 'Foreword' in Sergey Sayapin (ed), *The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State* (T.M.C. Asser Press 2015) v.

cross-border mobility despite the two countries adopting a policy of an open border.

The present situation of the dispute is misunderstood by experts, officials, and media, seeing it as merely a border dispute—which is an incomplete and unprofessional understanding of the fact. The fact that India has physically occupied the land followed by the stationing of the armed forces in it leads us to view the dispute not as a matter of ‘border delineation issue but an issue of aggression against UN Charter-based international law, which has been calibrated by several subsequent developments.

The review of developments relating to the law on aggression shows that it has been flourishing gradually after the definition of the term by the 1974 UN Resolution. Further developments surfaced following the adoption of the Rome Statute in 1998. In 2002, the Working Group on the Crime of Aggression at the ninth session of the Preparatory Commission, established by the Rome Conference, defines aggression and describes elements to be involved in the crimes of aggression. The commission has prepared an objective and analytical overview of the history and major developments relating to aggression before and after the adoption of the Charter of the United Nations.³² The overview has offered encompassing relevant information, among other things, on issues such as the categories of aggression that may be committed by any State, the types of conduct by a State that may constitute aggression at various stages of a military operation, the factors that determine the aggressive character of such conduct as well as possible defences. Equally, important reference is established by the Nuremberg Tribunal. While reviewing the Nazi war of aggression, the Nuremberg Tribunal linked the objectives of aggression with the underlying intention of the aggressor’s foreign policy.³³ The tribunal, therefore, provided a principle that helps to review the act of one state taking the territory of another with the lens of the aggressor’s underlying foreign policy guidelines or strategies. In the present case, the Indian aggressive acts in the disputed boundary-line are not accidental in any sense and are not arising simply out of the immediate political or economic situations. They are parts of the deliberate and consciously designed foreign policy and security strategies, thus constituting the act of aggression.

³² United Nations, ‘Historical Review of Developments relating to Aggression’ (United Nations Publication 2003) xvii <www.un.org/law/books/HistoricalReview-Aggression.pdf> accessed 7 January 2021; United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Codification Division Publications 1998), Annex I, Resolution F <https://legal.un.org/diplomaticconferences/1998_icc/> accessed 7 January 2021.

³³ United Nations (n 32) 12.

Looking from this vantage point, India's acts of occupying Nepalese territory by stationing armed forces, and constructing roads are categorically prompted by its strategic relations with China—a security necessity in its opinion. Since the occupied territory of Nepal holds strategic military importance for India, the latter is adamant about justifying its military presence in the former's territory through all means of cartographic manipulations. The Indian foreign policy guidelines to China constitute a major factor behind its activities of pushing Nepal's north-west boundary-line towards the east based on its superior military and economic strength.

Broadly speaking, the features of aggression relate to coercive conduct and wrong decisions of States taken respecting relations with others, as scholars McDougal and Feliciano have described.³⁴ According to them, the level of anarchy prevailing in the relations of states or the international sphere 'makes it unsurprising that states use varying degrees of coercion, or force, in their relations with one another'.³⁵ They opine that due to the absence of concrete mechanisms for the promulgation of international legislation and centralized international law enforcement agency as well as the compulsory jurisdiction for the adjudication of international disputes, self-help remains one of the most effective means available to states for the defence or assertion of their rights and interests. In practice, most states have at their disposal a range of tools for exerting force over others, which fall into one of four categories: diplomatic, ideological, economic, and military.³⁶ The absence of these mechanisms is, however, always wrongly exploited by stronger states against weaker or smaller states. The powerful countries, with comparative advantage of bigger military force and economy, as well as the greater strategic influential role, coerce the weaker states to abide by aggressive actions. The powerful countries are unjustly able to succeed more frequently in asserting strategic interests over weaker states with fewer material resources and lesser military capacity. In this context, we need to ponder as to what type of forces are relevant where aggression is concerned with.

The consensus on this matter is not fully settled by international law yet. Nevertheless, the act of military occupation of a country or its certain territory, or the presence of its armed force within the territory of another state is considered a serious form of coercion. These kinds of acts are considered an act of invasion, and a majority of international lawyers do

³⁴ Myres S McDougal and Florentino P Feliciano, *Law and Minimum World Public Order : The Legal Regulation of International Coercion* (Yale 1961) 171-184.

³⁵ *ibid* 28.

³⁶ *ibid*

accept or agree that the ‘invasion can be defined as an act of aggression’.³⁷ Similarly, there is no disagreement among international lawyers that acts of annexation or occupation of a state or its certain territory by another state would *prima facie* establish the act of aggression. Less grave uses of the armed forces, such as border skirmishes or border encroachment, and destruction of border-pillars for stealing of land, may or may not be considered as an act of aggression. Yet, such acts embrace coercion, and such acts are unacceptable either.

One consensus can be seen on the principle that a minimum precondition of aggression is the use of armed force across state boundaries.³⁸ In both cases, however, an act of aggression embeds an element of ‘wrong’—an ill-intention of causing harm. The *element of wrong* consists of the violation of a moral obligation by the wrong-doer of preserving peace and respecting other’s sovereign independence. The moral obligation of UN Members for preserving peace contains some assumptions to a just and fair international life. While the standards of morality may be debatable but the first assumption refers to an expectation that no state should renounce on its part an amicable behaviour to avoid abiding by basic or fundamental international standards in relations among states; it must refrain from doing such acts. It must abide by such rules and principles that are set forth by the UN Charter and concerned Treaties.

The second assumption is led by the first. Some international mechanisms and authorities exist to guide states to resolve their disagreements or disputes. These mechanisms act as the final arbiter of such disagreements or disputes. These mechanisms and authorities are multilateral treaties, precedents of the International Court of Justice, binding interpretation of international bodies, resolutions of the UN General Assembly, and the Security Council. The regional instruments might be significant authorities or mechanisms either. The South Asian Association for Regional Cooperation (SAARC) Charter, for instance, recognizes the principle that all members of the SAARC should work under the principle of sovereign equality as a basic rule of relations among the Member States.

The third assumption underlines the obligation of states to refrain from doing anything that undermines the peace. An act of aggression in one part of the globe has an impact on peace globally. The breach of peace impacts the human rights of people as well as the prosperity of people. No justice is possible to be realized without peace. Hence, an act of aggression of a

³⁷ Page Louise Wilson, ‘The International Politics of Aggression: An Historical Analysis’ (PhD Thesis in International Relations, London School of Economics 2007) 9.

³⁸ *ibid*

state against another appears as an antithesis to whole sphere justice in the world. These assumptions lead us to condemn both the grave and less grave military actions of a state internationally, because, as described above, the problem of aggression embeds a notion that peace is morally imperative for human security and prosperity.

The above-mentioned discussion of assumptions leads us to conclude that an act of stationing armed forces in another's territory is an act of aggression and is, thus, a wrong—both legally and morally. Understandably, India's acts of trespassing Nepal's territory, by building military installations, constructing a militarily-strategic road, and manipulating maps, constitute an act of aggression and thus violate the established principles of international law. These acts have breached the sovereignty and territorial integrity of Nepal.³⁹ Given those actions, the Government of Nepal, including all political parties, the general people, legal experts, media, and civil society, has urged the Indian government to remove itself from the territory by duly respecting the Charter of the United Nations and applicable principles of international law. The issue has been brought officially to the notice of the Government of India through diplomatic notes and also discussions between the concerned officials, which agreed to form a joint committee to settle the issue at the earliest.

Nevertheless, the Government of India, in plain repudiation of the earlier agreements between two countries, published the official map. This unilateral act violates international law because it incorporates a previously demarcated Nepalese territory. As amply discussed hereinafter, the demarcation of the border between the two countries has been, since 1816, fixed at the Mahakali or Kali River that originates at Limpiyadhura. But India has, by its act of cartographic manipulation, shifted the border-line to a rivulet inside Nepal, mischievously named as the Kali River after a recently constructed temple named Kali-Mandir (temple). There is no dispute that the Indian armed forces constructed the temple after the occupation of the territory. The territory contains some villages of Nepal, of which the inhabitants are officially incorporated in the census of the Nepalese population, and so that undisputedly hold the status of Nepalese nationality. They are enlisted as voters of Nepal since the first general election of Nepal in 1959 and pay land revenues in the local revenue office at Darchula, the bordering Western district of Nepal. If India claims the territory where the Border Police are presently located as its territory, then it has the onus of proof to establish that the Kali River originates from Lipulekh instead of Limpiyadhura. It also has the *onus of proof* to establish

³⁹ UN Charter 1945, art 2 (4).

that the Kali River stipulated as the border-line between Nepal and India by the Sugauli Treaty is the one ‘that originates at rivulet surrounding the newly constructed Kali Temple’—a temple constructed by the Indian security forces after its occupation. The inhabitants hold a Buddhist faith and have no reason for them to construct a Hindu temple. On the contrary, Nepal has presented enough documents, including treaties, and other documents, including survey maps and an abundance of historical literature showing that Nepal’s border in the Western frontier starts from the Kali River as it has been well marked by the Sugauli Treaty, and the same Kali River originates at Limpiyadhura as a major tributary of the Mahakali River.

3.0 Historical Perspectives, Facts, Anecdotes about Nepal’s North-West Boundary-line

As close neighbours, Nepal and India share a long and unique friendly relationship and cooperation in addition to many similarities in cultures, faiths, and ways of life. As is rarely the case elsewhere, Nepal and India have an open border—citizens of both countries can travel without official permission or a system entry visa. The two countries have been sharing cross-border trade since antiquity—for two thousand years. Some annals of history show that Nepal was a prosperous trading nation in South Asia in ancient ages. Kautilya, an ancient scholar from Maghad, has categorically described in his famous treatise *Arthashastra* about woollen blankets (*Bhringis*) and other commodities exported from Nepal to Maghad. According to this treatise, the merchandise had been chosen items in the *Patiliputra* market, during the 4th century BC.⁴⁰ The Treatise mentions: ‘Astaplauti sanghatva Krsnabhingisi Varsavarana mapasarka iti Naipalikam’—Nepal is a country which is famous for woollen blankets called Bhringisi (in *Arthashastra* 2, Adhikarana II Adhyaya, 30 Prakarana). This reference in *Arthashastra* brings a fact in the limelight that Nepali merchants had established extended trade relations with ancient Maghad and had been able to receive an honourable position in the Maghad’s markets. The excavation of *Kusana* coins in Kathmandu is another instance of Nepal’s flourishing trade with India.⁴¹ Hari Shen, a scholar from Samundra Gupta’s Empire, has mentioned that Nepal and Maghad established commercial relations since the Gupta era.⁴² Historian Jean

⁴⁰ ‘Nepali Economic Relations with British India after Unification of Nepal’ <http://shodhganga.inflibnet.ac.in/bitstream/10603/168019/8/08_chapter%201.pdf> accessed 4 May 2018; See also Yubaraj Sangroul, *South Asia-China Geoeconomics* (Vajra Books 2018) 404.

⁴¹ E. H. Walsh, *The Coinage of Nepal* (Reprint, South Asia Books 1990) 9.

Przyluski writes Nepal, from the Maurya age onwards, had been accessible via the northern Highway-route from *Patliputra* which passed through Vaishali and Sravasti. Some Greek accounts also show that the Grand Trunk Road of ancient India, a royal road with 1800 kilometer length connecting the northwest Frontier with *Patliputra* was the main link between Nepal and Maghad.⁴³ Nepali historian D. R. Regmi writes, ‘the route of Nepal connecting India with China and Tibet and the route of Assam leading to China and Southeast Asia were offshoots of this royal highway road’.⁴⁴ He writes: ‘In the first half of the seventh century A.D. Nepal was the center of transit trade between India and Tibet’.⁴⁵ According to Laxman Bahadur Hamal, this route connecting Bihar to Tibet and then China through Nepal made the continuous flow of trade among Nepal, India, Tibet, and China possible in the earlier phase of history.⁴⁶ Moreover, Bal Chandra Sharma, a renowned Nepalese historian, has described based on references in *Mulasarvastivada Vinaya Sangraha and Kautilya’s Arthasastra* that the beginning of India’s commercial relation with Nepal and Tibet can be pushed back to more than 500 BC.⁴⁷

The accounts present the existence of developed socio-cultural and commercial connectivity between Nepal and India, dating back from the 5th BC. They manifest that the open border between the two countries since antiquity has contributed to elevating the trade and cultural connectivity. Notwithstanding the fact, there are several drawbacks attached to the open border system. Some challenges are truly pressing. Particularly, the issue of security and safety of Nepal is one of them. Though the open border system offers some advantages for general folks, as the peoples from both countries are benefiting from employment, trade, education, and several other forms of connectivity from each other’s nation, the open border contains certain grave economic hurdles for Nepal’s economy, particularly because of India’s massive economy’s influence. India being the closest trading partner, Nepal, has become almost dependent on trade with it. Approximately, 65% of the total imports of Nepal take place from India alone. Nepal’s landlocked position

⁴² Vimal Chandra Pandey, *Prachin Bharat ka Itihas : A Manuscript in Department of Archaeology of Nepal* (S. Chand Publishing 2003) 57.

⁴³ D. R. Regmi, *Ancient Nepal* (Rupa & Co 2007) 16, 44; Haripada Chakraborti, *Trade and Commerce in Ancient India (C. 200 B.C. - C. 650 A.D.)* (Academic Publishers 1966) 23, 26, 182, 184.

⁴⁴ Regmi (n 43) 16, 44.

⁴⁵ *ibid* 42.

⁴⁶ Laxman Bahadur Hamal, ‘Economic History of Nepal: From Antiquity to 1990’ (Semantic Scholar 1996) 97.

⁴⁷ Dhanrajya Vajracharya and Tek Bahadur Shrestha, *Panchali Sasan Ko Aitihisik Bibechana* in Laxman Bahadur Hamal, ‘Economic History of Nepal: From Antiquity to 1990’ (Semantic Scholar 1996) 97.

also compels it to be dependent on India even for necessities, thus subjecting the Nepalese economy to the indirect control of India.

The open border is one of the compelling reasons behind being Nepalese currency hooked with that of India, the devaluation of which would necessarily lead to the devaluation of Nepalese currency in the world market. Dominant narratives suggest that Nepal is benefiting more from this border arrangement. Factually, this is not accurate. Despite the relatively smaller size and population density of Nepal, compared to India, it is the 7th largest source of remittance for India. According to the Pew Research Centre's survey, the Indian workers collected USD 3.22 remittance in 2012.⁴⁸ This situation rules out the validity of the narrative that Nepalese people benefit from access to India's labour market. The dire fact is that a larger chunk of remittance earned by Nepal, approximately USD 8.1 billion annually,⁴⁹ flies away to India.

The unending problem of border encroachment faced by Nepal from the Indian side is another grave problem attached to an open border system. India surrounds Nepal from the east, west, and south; it has often been metaphorically described that Nepal is effectively locked by India, which poses some lasting strategic challenges in Nepal's security and foreign policy management. The two countries share a 1,808 km-long border in this locked-position. Many issues are looming unsettled, though the history of the demarcation of the modern India-Nepal border began as early as March 4, 1816, right after the signing of the disputed Sugauli Treaty. This treaty, apparently forced by the colonial East India Company on its imperial strength, resulted in the forfeiture of the two-third part of Nepal's territory, including the densely forested southern plain-land. The treaty had been one of the sheer setbacks of Nepal's defeat in the war. The Malaun Convention signed on 15th May 1815 by David Ochterlony and Kazi Amar Singh Thapa on behalf of the British colonial regime and the Government of Nepal, respectively, preceded the controversial Sugauli Treaty of 1816. The Malaun Convention ended the war and also, the very first time, indicated that Nepal's western border would be fixed at the Kali River.⁵⁰ Subsequently, the Sugauli Treaty of 1816 followed the principle of border-line adopted by the Malaun Convention of 1815.

⁴⁸ Nepal 7th largest source of remittance for India, Center for the Study of Labour and Mobility (28 September 2015) <www.ceslam.org/news/6902> accessed 16 January 2021.

⁴⁹ Sangam Prasain, 'Nepal is 19th largest receiver of remittances with \$ 8.1 billion' *The Kathmandu Post* (Kathmandu, 10 April 2019) <<https://kathmandupost.com/money/2019/04/10/nepal-is-19th-largest-receiver-of-remittances-with-81-billion>> accessed 22 August 2020.

⁵⁰ Chandra B. Khanduri, *A re-discovered history of Gorkhas* (Gyan Sagar Publications 1997).

Nepal's historians have yet to explore the many hidden facts about the 1814-16 British imperialist invasions against Nepal. As some records show, the major interest of the British colonial regime behind this invasion was to severely weaken or destroy Nepal's strength of resistance against colonialism—to the scale that it would be virtually unable to raise the head against the British regime in India. Nepal doggedly resisted British colonialism at a time when Indian princely states and many elites were eagerly submitting and pandering to the colonial masters. Certainly, in such a situation, Nepal was considered to be a threat to the interests of the regime. It would also be an inspiration for some Indian princely states for defying the colonial subjugation. Nepal was adamantly refusing to surrender and was raising voice even against the imperial/colonial invasion of India. Ironically, the Indian nationals had been engaged by it to suppress Nepal.

Some documents unfold that Nepal's main motive in that brutal war was to prevent the East India Company's march against Nepal; in actuality, the war was imposed upon Nepal for two apparent reasons: first, the East India Company wanted to crush Nepal; and second, to save its rule over India. It was Nepal's patriotic resistance to preserve territorial integrity and sovereign independence. Many historical documents have starkly revealed facts that Nepal continuously declined to submit or surrender before the colonial regime. Nepal persistently refused to accept the Company's status as a legitimate ruler of India—Prithvi Narayan Shah dubbed the regime as the 'Firingi regime'. For that reason, some Western writers vehemently dislike him even in our time and keep spreading unfounded stories against the Nepal reunification campaign.⁵¹ While many Indian princely states voluntarily surrendered their authority to the Company for some benefits, Nepal refused to compromise with the Company's will of keeping Nepal under its subjugation. The 1767 war at Sindhuli Gadhi is one of the rare examples that show Nepal's adamant resistance against British colonial rule.⁵² This war has been mentioned by Thomas Paine as one of the sources of inspiration for Americans to launch the independence war against the British Empire.⁵³ Nepal's relentless denial of capitulating to the British colonial domination is illustrated by some rare historical documents revealed from the archives of the British colonial government itself. These documents unfold hidden facts of the British-Nepal war of 1814-16.

⁵¹ Ritu Raj Subedi, 'Prithivi Thought-I Respect All Faiths & Cultures' *The Rising Nepal* (22 August 2002) <<http://therisingnepal.org.np/news/27570>> accessed 22 August 2020.

⁵² Ritu Raj Subedi, '250th Anniversary of the Sindhuli Gadhi Victory: How Gorkhals Thrashed British' *The Rising Nepal* <<http://therisingnepal.org.np/news/20654>> accessed 22 August 2020.

⁵³ *ibid*

Two seminal letters of the Nepalese king to Ranjeet Singh, the king of Punjab, are remarkable examples. A secret letter of British East India Company's Government at Bengal, dated 25 January 1815, describes an event of Raja Ranjeet Singh's journey from Amritsar, heading to the east and ending at Beyah and Sutlej Rivers in 1808. Allegedly, this journey was a part of the campaign for the final conquest of the Sikh territories, adjoining the Sutlej River. According to this secret letter, he stayed in the region for a considerably longer period. The Nepalese court took his presence in the region positively and favourably. It considered that his presence would probably be of assistance to forge out an alliance against the East India Company. Nepalese court thought about the possibility of forging collaboration against British colonialism. The letter reveals a fact that he met with colonial rulers' news-writers (probably spies) at the place called Deyra and explained to them about two letters the Nepalese sent to him. As mentioned by this secret letter, from these two letters the king of Nepal had requested him to form an alliance and fight together against the colonial regime. Further, he had disclosed that he had received both these letters through Amar Singh Thapa. He also mentioned to the spies that the letters had described 'a difficult war being fought at Khalanga'. King Ranjeet Singh also provided information to the British spies that Nepal was eagerly looking for his help in the on-going war. One of the letters he had disclosed to the British spies had the following excerpts, different than what he described:

Do not suffer yourself to be deceived by the engagements with and protestations from the English. They had friendly engagements with me either, and the good faith which they displayed with me is now manifesting (indicating how the British attacked at the end). If you will encamp near to Plassee with all your force, I will give you the fort of Malaun. Then for every march to Hurdwar I will pay you sixty thousand rupees, and for every march on to Lucknow eighty thousand rupees. The Nabob Vizier of Lucknow, and all the Mahrattas, and the Rohillas of Rampore, are entirely attached to me, and on hearing of your coming will all join us. After we are all united, the conquest of Hindostan, and the expulsion of the enemy will be most easy.⁵⁴

This letter of the Nepalese king plainly explains that Nepal was engaged in campaigning for the expulsion of the colonial regime from Hindustan, and, therefore, its efforts had been dedicated to the salvation of India from colonialism. The letters also manifest that Nepal had tried hard to build an anti-colonial collaboration with Ranjeet Singh to expel the British colonizers out of South Asia. Nepal's intention had never been clear; it wanted to protect its territory but also wanted to remove colonial rule by

⁵⁴ J. L. Cox, *General List of Papers—Papers Relating to Nepaul War* (Indian Office Library 1824) (Secret Letter from Lord Moira, 22 May 1815) 559.

allying with others. Had Nepal's intention been limited only to protect its territory, it would have agreed, as demanded by the British officials, to give up claims over some villages nearby Butwal and would agree to accept the suzerainty of the colonial rule, thus avoiding engagement in war. Nepal rather wanted the colonial regime's removal by forging collaboration with Ranjeet and *Mahrattas*.⁵⁵

In a state of the shocking defeat of the British troops at Khalanga and Jaithak, along with timidity shown by General Wood and desertion of General Marley, the British self-confidence was fully shaken and Nepal's jubilation was in high posture. Amar Singh from Srinagar was persistently trying to forge out the, in the worlds of the secret letter, 'unity of the Marathas, Scandias, Holkars, and Peshwas, the Nizam and Ranjeet Singh'. These anti-colonial segments of the Indian population had been unanimous against the British. Penderel Moon, in that perspective, wrote, 'Nepal's bravery and fearless resistance had sent a wave of jubilation all over India'.⁵⁶

On March 2, 1815, Amar Singh wrote, 'If I succeed and Ranjore Singh with Jaspau Thapa and his officers prevail at Jaithak, Ranjeet Singh will rise against the enemy. In conjunction with Sikhs, my army will descend onto the plains, recover Dun; when we reach Haridwar, Nawab of Lucknow will take part in the cause'.⁵⁷ This ambition for a joint campaign could not, however, become possible mainly due to Ranjeet Singh's uncooperative and betraying attitude; he did not join the campaign even after Ranjore Singh had defeated the British at Jaithak. He betrayed himself, indeed. He not only stood out of the campaign but also handed the Nepalese king's letters to the British officials. He disclosed every detail of his conversations with Amar Singh, and also mocked Nepal.⁵⁸ The lack of unity and vision, besides opportunist attitude, among Indian princely states always stood as a stumbling block, which led them to the repeated failure. Ranjeet's betrayal was costly for him also; his kingdom subsequently became prey to the colonizers. The Qing Emperor of China also betrayed Nepal.⁵⁹ He refused to support Nepal in its fight against the colonial

⁵⁵ There are a series of correspondences among British officers regarding war between Nepal and the East India Company, disclosing facts about Nepal's efforts and campaign against the colonial regime. These correspondences suggest that the company ought immediately to suppress Nepal. For access to these letters, see Cox (n 54).

⁵⁶ Penderel Moon, *The British Conquest and Dominion of India* (Duckworth Publishing 1989) 379-80.

⁵⁷ Khanduri (n 50) 148.

⁵⁸ Cox (n 54) 571.

⁵⁹ Chen Qingying, *Tibetan History: Series of Basic Information of Tibet of China* (China Intercontinental Press 2003) 82-87.

regime. In return, the Qing dynasty had to encounter opium chaos in China and eventually lost sovereignty through a series of unequal treaties.⁶⁰ Chen Qing Ying, a Chinese historian, writes, ‘Nepal had sent a team of envoys to see Qing court’s commissioners at Lhasa, asking for the assistance of China. Nepalese envoys had pointed out that Tibet was Britain’s next target and the way would be clear once it occupied Nepal’.⁶¹ Despite the failures of all these efforts and hardships faced, Nepal saved itself from total defeat. Out of five fronts, Nepal defeated the British colonial regime in three eastern fronts. Thus the present shape of Nepal was protected as a country free from the colonial yoke forever.

The unmatched and unparalleled bravery the Nepalese soldiers demonstrated compelled the British invaders to end the war by pressing for an infamous treaty known as the Sugauli Treaty. In this course, the Malaun Convention, a treaty ending the war, was the first step of the colonial regime to forfeit Nepal’s two aforementioned western provinces. Through that treaty, the colonial regime obligated Nepal to agree to withdraw from the entire territory between the West of Kali River and the East of Sutlej River.

Unfair as it might be, that treaty was the first document to delineate Nepal’s border in western frontier— the Kali River was fixed as the western border between Nepal and India under East India Company’s rule. The immediate land lying to the east of this river is called Kalapani/Lipulekh, where India has now stationed its Indo-Tibet Border Security Force.⁶² Moreover, the treaty stipulated that the remaining Nepalese force, headed by Ranjor Singh Thapa, would withdraw from Garhwal and Kumaon towards the east of the Kali River, proceeding through the Hill routes. This particular provision also affirms that the ‘Kali River that delineated the border-line between Nepal and India was the one that originated at Limpiyadhura’. Noticeably, this treaty neither mentioned anything about the Kali Temple nor did it mention Lipukhola.

According to a provision of the Malaun Convention, 1815, the Nepalese troops had to carry their goods, including two cannons and personal weapons across the Kali River. Accordingly, the Nepalese remaining troops in lost provinces marched towards Nepal’s border district, Darchula. Here they were received by Nepalese governor Bum Bahadur Shah.⁶³ The accompanying British scouts returned after making it sure that

⁶⁰ Baburam Acharya, *Chin Tibbat ra Nepal (China, Tibet and Nepal)* (Fine Prints Nepal 2017) 272-81.

⁶¹ Ying (n 59) 82.

⁶² Bhandari (n 7) 19-33.

⁶³ Cox (n 54) 753-55.

the Nepalese troops had crossed the Kali River. The very first step the Nepalese troops treated in the water while crossing to Nepal was the Kali River which flowed down from Limpiyadhura. It has been situated to the west of a rivulet, namely Lipukhola. The area surrounding this rivulet, situated to the east of Kali River, is now occupied by India. According to the Times of India, the total area of Kalapani occupied by India is 372 square kilometers.⁶⁴ It is, however, more than that. Anyway, the territory occupied by India is significant for Nepal, a country with a small geographical area.

About a year after the Malaun Convention was signed, the Treaty of Sugauli was concluded in a very critical situation. The situation was very awkward, humiliating, and psychologically depressing to Nepal. The defeat in the war brought a division in the royal court of Nepal, and the military of Nepal had been hit by low-morale. Khanduri, an Indian ex-military officer, writes, ‘Lord Moria never expected that the Gorkhas would capitulate so quickly’.⁶⁵ The British stratagem for further weakening Nepal by vivid ploys had thickened; besides, it had concentrated its bigger force with more sophisticated weapons to re-attack, should Nepal’s royal court fail to endorse the Sugauli Treaty.⁶⁶

Nepal’s royal court had refused to approve the Malaun Convention, which Amar Singh Thapa had signed to end the war. Following the battles at Almora, and Malaun, Nepal faced very critical setbacks in provisions as well as mobilization of troops. The British colonial regime had amassed the troops. Hence, the compulsion was created to sign the treaty. Until Nepal agreed to sign the treaty, the regime began to amass troops for the second campaign targeting Kathmandu, the capital city.⁶⁷ A huge force was trying to destroy Nepal’s defense at Makawanpur, less than a hundred kilometres south of Kathmandu. Nepal’s position was thus precarious—neither could it surrender its sovereignty nor was it in a position to mobilize a stronger military campaign. Nevertheless, as the worst option, Nepal consistently declined to sign the Sugauli Treaty, inviting the massive onslaught of the colonial forces targeted to take Nepal’s capital Kathmandu but in vain.⁶⁸

⁶⁴ ‘Kalapani Dispute: All You Need to Know’ *The Times of India* (3 January 2020) <<https://timesofindia.indiatimes.com/india/the-kalapani-dispute-all-you-need-to-know/articleshow/73078440.cms>> accessed 22 August 2020.

⁶⁵ Khanduri (n 50) 145.

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

This situation was politically as well as economically painful for Nepal. ‘Subscribing to the loss of more than half of the territory of the nation would be a painful submission of the proud people’, wrote Lord Moria himself in his report of 2 August 1815.⁶⁹ Anyway, despite their fear and reluctance, the second campaign to destroy Nepal was finalized under the command of David Ochterlony. The campaign, however, could not succeed; the Nepalese military fought bravely against the enemy with unprecedented valour; the British troops in its mammoth size could not move an inch towards the further north from Makwanpur, and had to eventually withdraw in desperation. Though Nepal suffered a costly defeat due to the failure of reinforcement and want of ammunition and food supplies in the western fronts, the soldiers of Nepal had taught a lesson to the British Empire which nobody had so far done to it in Asia. The following excerpt from Charles Metcalfe’s observation, one of the leading commanders of the regime, brings forth an interesting anecdote:

We had never met with an enemy who showed decidedly more bravery and greatest steadiness than our troops possessed; it is impossible to say what may be the end of such a reverse of order of things. In some instances, Europeans and natives have been repulsed by inferior members with sticks and stones. In others, our troops have been charged by an enemy sword in hand and driven for miles like a flock of sheep. In this war, we have numbers on our side and skill and bravery on the enemy side.⁷⁰

Despite intensive and hard patriotism, an anti-colonial consciousness and conscience, skills, and bravery in soldiers, and attempts to forge-out unity of Indians, the war ended in favour of the colonial regime. Nepal’s strength to defend itself got severely declined, gradually. The treaties of Malaun and Sugauli had been imposed in that awkward situation. Nevertheless, the British officials, also because of possible Chinese strategic support and Nepal’s success in forming a unity with Indian princely states, had been wary and considered that, in words of Khanduri, ‘rubbing the Gorkhas beyond a point was not in their interests’.⁷¹ Hence, they wanted to end the war as soon as possible. This desperation of the British to end the war can be seen in Lord Maria’s words in his diary:

Ameer Khan (of the Pindari) has in his camp 30,000 fighting men, 125 pieces of canons. It is clear that he is waiting in the hope of untoward events occurring to us in the Nepalese war; an expectation founded on the extravagant opinion, they entertain of the Gorkha power and the reverses we have already suffered in the context.

⁶⁹ Cox (n 54) 753-55.

⁷⁰ Khanduri (n 50) 147.

⁷¹ *ibid* 146.

The British had been desperate to avert the possibility of an anti-British coalition of the kingdoms under Nepal's leadership, which had still been failing only due to lack of vision and trust among selfish Indian princely states. In the wake of such an urgent situation, the British officials, as disclosed by the numbers of correspondences among the colonial officers as well as between the officials of the East India Company and the Imperial Government in London, engaged in a hectic discussion to forge out principles for the proposed treaty—the Sugauli Treaty.⁷² By the mid of 1815, a raw draft of the Sugauli Treaty had been under intense discussion within the circle of high-ranking officials of the East India Company; for that reason, Ochterlony was indicatively mentioned in the Malaun Convention 'the Kali River' as the western border-line between Nepal and India. Therefore, it can now be argued that the Sugauli Treaty was authored with a full-purview of stratagems and ploys—the Nepalese envoys involved later in negotiations with the British had also been influenced in their favour.⁷³ This was a painful tragedy for Nepal.

Through another *Secret Letter* dated 1 June 1815, Lord Moria, a high-ranking East India Company officer wrote:

I have directed the transmission to Mr. Gardner of the instructions of which copies are enclosed forming Nos. 83 to 85. The concessions which I shall deem it essential to insist on the *Goorka* Government as the preconditions of peace are:

1. Their perpetual exclusion from all connections with the countries heretofore under their authority west of the Kali (this term was considered by the British since the very beginning of their decision for concluding a treaty).
2. The cession of all the lowlands, from the Kali eastward to the Tista, rendering either the foot or the ridge of the lowest range of hills the common boundary throughout that line.
3. The formal renunciation of all the claims of the *Goorkas* which led to the war.
4. The permanent residence of accredited Ministers from each Government at the Court of the other.
5. The exclusion from the *Nepaulese* territory of Foreign Europeans and Americans, and of British subjects, without special permission from the British Government.

⁷² Cox (n 54) 750-75.

⁷³ *ibid*

6. Security for the Rajah of *Siccim*, and any other Hill Chiefs who may have risen against the Goorkas, to the eastward, and a good frontier in that direction.

The aforementioned six points had been proposed before June 1815 when war continued. They form the very foundation of the Sugauli Treaty. The proposal for these six points starkly makes it plain about the intention of the colonial regime. These 'six points' can also be seen as an original unilateral draft of the Sugauli treaty; the colonial ruler of India wanted to impose these terms and references to cripple Nepal's strength and sovereignty. There were different opinions regarding those terms and references even among the officials of the East India Company. In any case, however, the above-mentioned preliminary draft of the treaty invariably proposed the Kali River as a borderline between India and Nepal as stipulated by the Malaun Convention, 1815. None of the East India Company officials disagreed on this matter. It means that the colonial rulers had pre-determined this issue, from the very moment of the onset of the war. Chandra B. Khanduri, one of the Chief Ministers of Uttarakhand, a province of India comprising two lost provinces of Nepal, acknowledges this fact in his seminal book, namely 'the Rediscovered History of Gorkhas'.⁷⁴

Before the treaty was signed, the East India Company made desperate attempts to influence or bribe Bum Shah, Nepal's governor at Doti at that time. He was lured to come out with a proposal for the annexation of Doti in the territory to be captured by the company. There have been several correspondences among Company's officials in this regard. The effort was, however, not successful.⁷⁵ In the meantime, the *Secret Letter* of Lord Moria, dated 1 June 1815, disclosed a detailed design of the Colonial regime regarding the cessation of war and takeover of Nepal's territory. The following excerpts from the *Secret Letter* from Lord Moira dated 22 May 1815 reveal some interesting information regarding the issue of border demarcation:

All the maps in possession of this Government are so incorrect that no satisfactory judgment can be framed from them with regard to what the interests of the Company may require in that respect. To the eastward, the Sarda River appears to present a natural limit. Still the important object of securing the trade with Tartary through the Himalya Mountains against the interference of the Goorkas might not be attained by fixing that river as the boundary; you are, therefore, requested to satisfy yourself on this point: and should it appear that a frontier- beyond the Sarda, in the part where it approaches the mountains, would be required for the purpose

⁷⁴ Chandra B Khanduri, *A re-discovered history of Gorkhas* (Gyan Sagar Publication 1997).

⁷⁵ *ibid* 571.

above-mentioned, the extent of it must be defined, so as that the cession of that tract must be made a stipulation in any negotiation with the Goorka Government.⁷⁶

The excerpt (emphasized by underline) tangibly shows that the border-river in the north-west selected for demarcating the border-line was none other than the Kali River originating at Limpiyadhura. The idea behind fixing the Sharda River, in the part where it approaches the mountains, was very strategic. This was done to save the route for Colonial rule to approach Tibet for trade with Tartary—China's Xinjiang and Central Asia. The colonial officials thought the Kali River would prevent Nepal's troops to hinder traders from the occupied region to approach Tibet. The selection of the Kali River originating at Limpiyadhura was purposefully selected by the colonial rulers; it was not merely an incidental decision. This particular historical fact refutes India's claim that the source of Mahakali River belongs to the rivulet originating at presently located Kali Temple, which is situated within Nepal's territory.

The Sharda River is called Mahakali River in Nepal, of which the main tributary is the Kali River originating at Limpiyadhura. As described above, Lord Moria's letter starkly establishes the validity of the Nepalese claim that the Kali River originating at Limpiyadhura forms the western border-line between Nepal and India. The preference or the strategy of the East India Company in choosing a bigger river as the border-line was purportedly or wilfully driven by an idea of preventing the Nepalese force from obstructing British traders to cross over to Tibet with the *Tartary*. The Kali River originating at Limpiyadhura comprises the main or original tributary of the Mahakali or Sharda River or Mahakali River. Hence, the intention imbued in Lord Moria's letter categorically repudiates the Indian government's claim that the name Kali River refers to a summer-flood rivulet located even eastward from the spring-water rivulet known as Lipukhola. The above excerpt makes it plain and clear that the colonial regime purportedly wanted to fix the Kali River originated at Limpiyadhura as a natural barrier between Nepal and India, thus ensuring its security from Nepalese troops' intrusion. The British colonial officials feared obstruction from Nepal in their unrestricted access to Tibet and beyond. This fear was addressed by placing the Kali River as the border-line which would constitute a natural barrier. The barrier was considered strategically vital to restrain the Nepalese forces from entering into the occupied territory.

⁷⁶ ibid

Furthermore, a *Political Letter* of British officials Mr. Charles Grant and Thomas Reid based in London to the East India Company Government in Bengal, dated 15 December 1815, furnishes equally important evidence in this regard. This letter categorically acknowledges the importance of the Kali River as the Western-borderline between Nepal and British India. The letter reads:

The fruits of these decisive and important successes against the principal leader and force of the Nepalese State, combined with the previous reduction of Kamaon, have been, says the Governor-General, the entire extinction of the Goorka power throughout the countries formerly in their possession to the westward of the Kali or Gogra river, involving the loss to them of more than a third of their dominions: a result which, in the opinion of Lord Moira, must either produce an early and honourable peace or enable us to pursue the war with eminent advantage.

The letter confirms the Kali River as Nepal's western border-line; the border-line seems to have been incorporated in the Sugauli Treaty upon formal approval of the Imperial Government in London. As already informed above, the British Generals instantly engaged in removing Nepalese soldiers from Garhwal and Kumaun right after the conclusion of the Malaun Convention. They wanted to immediately evacuate the provinces, and thus, they permitted and escorted the remaining Nepalese troops, unmolested and unobstructed, along with their public and private properties, across the Kali River.⁷⁷ The colonial regime did not want the Gorkha troops to stay longer because of their possible reinforcement coming from the Government of Nepal with support of the Chinese emperor as well as other Indian princely states. To sustain the peace, the British officials, therefore, quickly finished the draft of the Sugauli Treaty. Lord Moira suggested, through a *Secret Letter*, dated 5 August 1815, the provisions to be addressed by the draft of the treaty. He wrote, 'to bring the terms distinctly under your view, I shall state the substance of each article of the draft shortly adding such observations as may appear to be necessary'. This draft of the treaty was humiliating, contemptuous, and authoritative. It included the following, in brief:

Article 1: Restoration of the relations of Peace (Requires no remark).

Article 2: Renunciation of the disputed lands (Requires no remark).

Article 3: Cession of the Low Lands, from the *Kali to the Teesta*—the only question arising on this was whether the base or the summit of the low-estrange of hills should form the boundary. (This was objected to by Nepal. Hence, Lieutenant-Colonel Bradshaw was authorized to agree to the base of the hills forming the boundary).

⁷⁷ *ibid* 753.

Article 4: Cession of *Naggree* and *Naggarcote*, heretofore forming part of the Territory of *Siccim*—the article has the double object of securing a good frontier for the Rajah of *Siccim*, and opposing a barrier to the extension of the *Goorka* conquest eastward. The claim was established to our protection by the Rajah of *Siccim*.

Article 5: Renunciation of all claims to a connection with the territories *west of the Kali* (Requires no remark).

Article 6: Stipulation of the recognition of any treaties we might make in the course of the war with chiefs or tribes, subjects of Nepal.

Article 7: Stipulation for the security of the Rajah of *Siccim*.

Article 8: Exclusion of the subjects of European and American States (Requires no remark).

Article 9: Reception of Resident Agents from each Government.—this article appears to me to be of the highest importance, with a view to the permanency of peace; and it was with great reluctance that I gave it up, at a time when the condition of our affairs appeared to me to render an early accommodation of greater consequence than obtaining special provisions, however desirable in themselves, that was not demanded by our honor or the security of primary interests.

Article 10: Revival of the Commercial Treaty of 1792.

This proposed draft was unacceptable to Nepal. It was, therefore, rejected outright by the Government of Nepal. Yet, the draft provides a solid piece of evidence regarding the British intention in making the Kali River as the boundary of Nepal, the westward. Because of India adamantly inheriting the *McMahon-line principle* as a guideline for demarcating borders with China, its attitude of rejecting the boundary with Nepal based on the Sugauli Treaty is dubious and unreasonable. It represents a double-standard in the moral standing of India's relations with neighbouring countries. Since Nepal refused to accept the draft, it was subsequently changed in the final version, but Article 4 and 5 fixing the Kali River as the western border-line of Nepal remained intact, which India is adamantly refusing to pay attention to.

The Sugauli Treaty left Nepal with staggering territorial losses. Nepal lost 2,04,917 square kilometers of land to the East India Company, thus confining Nepal into the territory of 1,47,181 square kilometers merely.⁷⁸ Moreover, the provision about the expulsion of Europeans from Nepal and the imposition of a precondition to obtaining prior approval of the East India Company for having negotiations with Sikkim on any issues did starkly limit the sovereign authority and independence of Nepal. The treaty

⁷⁸ Phanindra Nepal, 'Brihad Bichar Greater Nepal' 3 *Swabhiman Patrika* (2064 B.S) 15.

also incorporated a provision to have a British resident in Kathmandu, thus offering recognition of Nepal to the Company as the legitimate government in India.

The signing of the Sugauli Treaty was followed by the 'Border-line Pillars Agreement in 1845'.⁷⁹ This agreement required, *inter alia*, (a) the consent of two countries for installing border-pillars in the boundary-line; (b) the acceptance of the straight-line principle between two pillars, in the respective side, in case if the existing border-line is changed by alteration of the course of the river; (c) the consent to avoid future contentions regarding border by erecting pillars in fixed interval throughout the boundary between two countries; and (d) the consent to keep the border-pillars in the same size and height, should they require change due to destruction. In compliance, Nepal-India border-lines have been categorically demarcated and kept determined. The north-west border-line had, therefore, remained fixed at the Kali River originating at Limpiyadhura over the last two centuries, without any dispute until India occupied it in 1960 despite Nepal's uninterrupted discontent and disapproval.

Another Treaty between Nepal and the East India Company had been concluded in 1860, which is known as '*Naya Muluk Sandhi*' (New Land Treaty). On 8 April 1857, the East India Company Government executed Mangal Pandey, a soldier, for his leading role in a revolt against the colonial regime. Following the execution, the regiment of Pandey dispersed. Sooner followed was the dissolution of the Lucknow 7th Regiment on 10th May 1857. This incident led to the outbreak of a nationwide revolt of the security forces, thus heralding the first independence revolution in India.

Hearing about that fragile situation in India, Nepal's Prime Minister Junga Bahadur Rana, through a meeting with the British resident at Kathmandu, offered Nepal's military assistance to the colonial regime.⁸⁰ Probably, this assistance was offered with an intention and hope of obtaining formal recognition of the colonial regime to Nepal's sovereign independence. This move of Junga Bahadur was, however, a sheer mistake, if not an immoral act. It might be immoral because it offered service to an utterly racist colonial regime. The decision of Jung Bahadur in Nepal was not unopposed; several court officials and Rana generals categorically opposed the decision. On 3 June 1857, the assembly of court officials had been

⁷⁹ Bhandari (n 7) 6.

⁸⁰ J. B. Rana, 'Shree Tinharuko Tathya Britanta' Part 2 (Factual Details of Rana Prime Ministers 2006) 111.

convened in which the majority of the attendees expressed their suggestions to assist the revolutionaries and actively act for removing the colonial regime from India. Some of them also argued to adopt a strategy of being neutral.⁸¹ Interestingly enough, Dhir Sumsher, one of Rana Generals, also proposed to take over the reign of India by removing the British regime.⁸² However, Junga Bahadur announced Nepal's support to the British. He recalled the past war in 1814 in which Indian princely states had declined to assist Nepal. As a great shame to the history of Nepal, the Indian soldiers' revolt was quelled by the British regime with the overwhelming assistance of the Nepalese Army and the Gurkha Brigade. The Rana regime contributed this way to the holding of the British imperial regime for almost one more century in India—this act of Junga Bahadur stigmatized not only the history of Nepal but also demoralized Nepal's historical pride. Following this event, the Rana regime in Nepal ignored historical connectivity and relations with China.⁸³

Quelling the rebellion in different parts in North India, the present Uttarpradesh of India, Junga Bahadur, left for Allahabad from Lucknow and had a bilateral talk with Charles John Canning, the then Governor-General of the East India Company. Mr. Canning appreciated the military assistance of Nepal and proposed to return the Nepalese territory occupied by the British after the 1814-16 war.⁸⁴ But the company never did so. In the coming years, the East India Company returned to certain territories, such as Banke, Bardia, Kailali and Kanchanpur. The 1960 treaty was concluded which redefined certain border-lines between Nepal and India, accordingly.⁸⁵ Another Border Treaty was signed in 1875 that settled the disputes in territories of Nepal's Dang district.⁸⁶ In 1920, Sharda Treaty (Mahakali River) was signed. This treaty also confirmed that the Mahakali River originates from Limpiyadhura. All these arrangements between Nepal and the British colonial regime show a stable and clear border between Nepal and India before the latter's independence in 1947.

The Kali River stood as the north-western-border of Nepal unquestioned and unproblematic till the independence of India. Long after the Sugauli Treaty, Nepal and India also signed an agreement, known as the Mahakali

⁸¹ *ibid*

⁸² *ibid*

⁸³ Hiranya Lal Shrestha, *Sixty Years of Dynamic Partnership, Kathmandu: Nepal China Society* (2000) 207-238.

⁸⁴ J. B. Rana, *Life of Maharaja Sir Junga Bahadur G.C.B. G.C.S.I., ETC. of Nepal* (1990), 217; W. Digby, *1857-A Friend in Need, 1887-Friendship Forgotten: An Episode in Indian Foreign Office Administration* (1993).

⁸⁵ Bhandari (n 7) 8.

⁸⁶ *ibid*

Agreement in 1996, which also fixed the River Mahakali as the western border-line between the two countries. From this treaty, the people of Nepal expected to resolve the border issues in the Western frontier of Nepal, but it did not happen so. Despite closer relations between the two countries, the post-independent India continued to spawn problems in border-lines between the two countries. Encroachment of Nepal's territory by India became a perennial problem; the issue of border encroachment became a primary source of the problem in relations between two countries. Particularly in places such as Tanakpur, Mahespur, Thori, Susta, Manebhanjyang, Pashupatinagar, Bhandabari, the Mechipul area (two-third) of Kakadwhitta are only a few to mention, the problem lingers unresolved and forms a source of negatively affecting the relations between two countries.

Similarly, the Indian Government continues constructing high dams and embankment in different places such as Laxmanpur, Rasiyawall-Khurlotan, Mahalisagar, Kohalawas, and Kunauli. These dams and embankments have caused a vast amount of Nepalese territories to submerge and turned them into swamplands, particularly during the monsoon season every year. The encroachment has not stopped in the places such as Lalbojhi and Bhajani in Kailali, Chaugurji of Gulariya in Bardiya, Parasan Paratal in Kanchanpur, and 1.5 km of Koshi embankment towards the east-west highway. The encroachment in Susta has ever been increasing. Lately, the encroachment from the Indian side has been seen in Shreeantu and Guphapatal in Ilam, Someshwor in Chitwan, Jhitkaiya in Bara, and the ten yards-no-man's land (Dashgaja) area of Koilawas in Dang. The border encroachment activities from the Indian side have not stopped yet.⁸⁷ Twenty-six districts (out of 77) of Nepal share borders with India. Of these, 21 districts in 54 different places are facing border encroachment from India. Reportedly, Nepal has so far lost approximately 60,000 hectares of land from such encroachment. Of them, the most disputed area is Kalapani-Limpiyadhura, where India has occupied a total of 37,000 hectares of land.⁸⁸

4.0 Additional Pieces of Evidence and Exhibits of Occupation and Aggression

In sum, several historical documents discussed help to conclude that Nepal's North-Western border-line has unequivocally been laid on the

⁸⁷ Gyanendra Paudyal, 'Border Dispute between Nepal and India' (2013) I Researcher <www.nepjol.info> accessed 30 July 2020.

⁸⁸ *ibid*

Kali River; these documents conclusively and undisputedly establish the claim of the Government of Nepal. These documents have been corroborated by expert opinions and arguments of hydrologists, surveyors, geographers, anthropologists, historians, and lawyers. The territory eastward the Kali River belongs to Nepal since antiquity; hence, it has been an integral part of Nepal historically, since even before 1816, as shown by historical proofs discussed in previous pages.

In the 13th century, Nepal began to see upheavals; the rise of mushroom-like principalities in particular.⁸⁹ This phenomenon led the country into a chaos of fragmentation. Consequently, the nation was divided into many dozens of smaller feudatories. They were engaged in unending conflicts; they were intolerant to each other and arrogant. The most disastrous consequence was that the wisdom of the nation vanished. The territory—Kumaun and Garwal—seized by the East India Company by War in 1814-16, during the fragmentation period were under the rule of Jumla kingdom, also called Malla or Khasa kingdom. Even these two provinces had been fragmented into several feudatories in the later part, before reunification. Originally, the territorial extension of the Malla kingdom included the two territories as an integral part of the kingdom. Historically, this kingdom represented the Simja Civilization, from where the present official language of Nepal (Nepali) emerged and evolved out. Nepal got integrated again in the late 18th and early 19th century, which included the Kalapani area and beyond up to Kangara, the Western frontier of Garwal. After 1816, the territory westward the Kalapani area remained was lost to the British colonial invaders. This historical fact establishes that India unjustly succeeded the territory as a hegemonic power.

Additionally, the following pieces of evidence corroborate Nepal's claim over the territory—the Kalapani Area—occupied by India:

- a. The Government of Nepal conducted a national census in 2018 B.S (1962) which included the population of the Kalapani area consisting of three villages, namely Kuti, Nabi, and Ganji. These three villages are located eastward of the Kali River originating at Limpiyadhura. An officer of the Government who conducted a census of this part of Nepal was Bhairav Risal, a renowned journalist of Nepal. Had been serving the Government of Nepal at that time. According to him, the Director of Nepal's Statistics Department had deputed him to conduct the census. He writes, 'He had been given by the director a survey sketch that plainly outlined the villages lying in the area within the border of Nepal'.⁹⁰

⁸⁹ D. R. Regmi, *Medieval Nepal* ((Rupa & Co 2007) 710-732.

⁹⁰ Bhairav Risal, 'Foreword' in Bhandari (n 7).

- b. According to Risal, the people of these villages had voted for the first parliament General Election of Nepal in 1959. They also had voted for the *Pradhanpanch* (Headmen) and members of the local *panchayat* (a local government body of that time) in 1963. In the days to come, they voted for National Assembly and District Assembly officials either. The records of the census and elections are available in concerned departments even today. The Indian Force appeared in the area only after 1964. Reportedly, initially, it appeared in the shape of a smaller post. According to the people, the force stationed constructed a small temple and a pond to collect water from the surrounding area. This area was almost inaccessible at that time. The canal-water flowing from the pond is now claimed by India as the origin or source of the greater Mahakali River. The canal-water is claimed by India as the Kali River described by the Sugauli Treaty and subsequent survey maps. This is a sheer lie generated by cartographic manipulations.⁹¹ According to Nepal's Election Commission record, all three villages located eastward of the Kali River originating at Limpiyadhura included as an integral part of Beitedi Constituency in 1959 and after. Mr. Krishna Prasad Lekhak was elected from this constituency, representing the Nepali Congress Party. Additionally, the election records show that the people of these villages also voted in the subsequent National Panchayat (Assembly) elections.⁹²
- c. As it has recently been discovered, the Beitadi Land Revenue Office possesses the proof of land taxes being paid by the people from changru, tinkar, budi, gunji, garvyang, and nakhyal villages to this office till the year 1997 BS. An edict issued by Colonel Sumherdhowj Rana, about 150 years ago, in 1924 (B.S) had explicitly recognized the ownership of the land by local people of the area over the land, based on the proofs provided by them through a petition against the encroachment of people of Darchula. The petition reveals that the local people had for a long time been exclusively enjoying the ownership over the lands as Nepalese citizens and tenants of the feudal lord of Doti, a province of Nepal at that time.⁹³
- d. On June 3, 1998, the Embassy of India in Kathmandu issued a note responding to the petition filed by a group of Nepalese students against its occupation of these villages. In that note, the Embassy mentioned:

⁹¹ *ibid*

⁹² *ibid*

⁹³ Edict issued by Lieutenant Colonel in favour of the People of Doti-Lekh (Doti Upperland) Garcha Village, in Falgun (1924 B.S); Annexed in Bhandari, (n 7). See, Edict of Prime Minsiter Chandra Sumsher, 1962 BS in (n 4). This edict recognizes the land ownership of people of the area categorically.

...There is no Indian army's presence in Kalapani since 1962 as was their impression, and that there is only an Indo-Tibetan Border Police in an area which, according to all records available with the Government of India, has been on the India side of the border since 19th century and acknowledge as such by successive British India and Nepalese Governments. However, in the spirit of friendship and good neighborly relations between India and Nepal, India has agreed to Nepal's request to discuss the location of the boundary in this area on the basis of a comprehensive study of the historical records...

The Indian Government has, however, consistently declined to pursue discussion on the issue. The argument it has put forth accepts the fact that there is a presence of Indo-Tibet Border police and claims that it remains on the border of the Indian side. This claim of India is refuted by the mention of the Kali River which has been explicitly stipulated as the border river by the Sugauli Treaty of 1816. The India claim is not only uncorroborated proof but also un-conscientious. India declined to pursue negotiations and un-conscientiously occupying the territory by stationing a huge force. It has not only declined to pursue negotiations but engaged in constructing the road to the Chinese border. The Ambassador of India to Nepal, K. V. Rajan in 2001 had said, in an interview with Kathmandu based vernacular daily: 'We would give up the place should it be proved not belonging to India'.⁹⁴ Again, his words proved nothing but a lie. The persistent decline of India to pursue a policy of negotiation, followed by its involvement in the construction of the road in the disputed area, shows that it covets to follow a tactic of holding and occupying the land for perpetuity.

- e. An improved map of India prepared by Arrow Smith in the long past identifies the river emanating from Limpiyadhura as the Kali River and the mainstream of the greater Mahakali or Sarada River. India is closing its eyes to recognize this fact.
- f. On Kartik 17, 2030 B.S. (1994), the Home Ministry of Nepal formed a special committee comprising Section Officers Mr. Purushottam Regmi and Hari Prasad Khatri, representing the Home Ministry and the Foreign Affairs, respectively. The committee had been commissioned a task to carry out the field survey and prepare a comprehensive report. In the report submitted to the Government of Nepal, the committee categorically identified Limpiyadhura as the source of the Mahakali River and the location occupied by the Indian security force as an integral part of Nepalese territory.⁹⁵ The

⁹⁴ K. V. Rajan (2000), India will withdraw from Kalapani if it is proved to be in Nepal', (Interviewer), Kantipur Daily, 14 June 2000.

Government of India has not objected to this official report of the Government of Nepal.

- g. The Mahakali River is named after the customary deity *jolikong* and such has been stated in the books of 4th graders in India. Hence, the Indian claim that it originates from the pond at Kalapani is self-contradictory and is an outcome of cartographic manipulation. The intention of India is obvious; it wants to occupy the land based on its superior military strength.
- h. In 2014 B.S. the Indian armed force situated in Kalapani unjustly and arrogantly prevented the Nepalese survey team to conduct the cadastral and boundary survey of the area. Nepal had put a concern to the Government of India. The concern of Nepal was left unaddressed by the Government of India, though its ambassadors in Kathmandu kept saying that the Government of India was ready to resolve the issue through discussions based on a comprehensive study of the historical documents.
- i. According to some hydrologists, Limpiyadhura forms the origin or source of the Kali River, the main tributary of the greater Mahakali or Sarada River. The Kali River has been repeatedly stated by the Sugauli Treaty as well as other correspondences among officials of the British colonial government. By this hydrological fact, the source of the river is always wider in origin and narrows down with its flow. The area of Limpiyadhura holds a wider source than that of the source claimed by India, thus making Limpiyadhura the indisputable source of the Mahakali River.
- j. The Indo-Tibetan Border Security Police is occupying the area throughout the year, i.e., the whole twelve months, while Nepal holds back its army for four months due to harsh weather conditions. India is taking advantage of the difficulty for Nepal to access the land.
- k. The map published by J.T. Waker in 1850 shows that the Kunti-Yankti River (the *Kali Nadi* in Sanskrit) originates from an elevation of 18,000 ft at Limpuyadhura, which then flows downstream through Thuling, Kunthi, Mandung until it reaches Kalapani where it meets with Lipu Khola. In conformity with the map of J.T. Waker, the Survey of India had published a new map in 1856 showing the river originating from the Limpuyadhura as the Kalee River curving its way through Thuling, Kunli, and Magdung until it meets at the juncture of

Gunga with a secondary tributary flowing from the east. Kunti-Yankti in the Tibetan language, Kalee in Sanskrit-Nepali, is, therefore, the well-identified stream of the greater Mahakali River which combines several other tributaries. This river ultimately forms the Mahakali River in Nepal and the Sarada in India.

- l. The Joint Technical Committee (JTC) of India and Nepal excluded the area of Susta and Kalapani from surveying and fixing the actual border-line while preparing the strip map. Noticeably, Nepal had made its claim over the land from earlier days under the provision laid down by the Sugauli Treaty. It means that the Indian occupation of the territory continues despite Nepal's hard efforts to remove the occupying force through negotiations.
- m. Francis Buchanan Hamilton, in his book 'An Account of the Kingdom of Nepal', has mentioned that the Kumaun is a very considerable territory bordering with Doti (a Nepalese district) on the east, the boundary being the *Kali Nadi*.⁹⁶ This is another piece of evidence showing the Kali River as the border-line between the two countries. Moreover, several other proofs show Indian presence with a force in the said territory is an instance of arrogant behaviour to a weaker neighbour.

5.0 Survey Maps and Official Correspondences

The following survey maps are categorical proofs showing the Kali River originating at Limpiyadhura as the North-Western border-line between India and Nepal since 1816. While the cartographic manipulation from the Indian side—rendering a rivulet but a bigger river as the border-line—began quite early, its acts have been challenged in the light of several documents that present the villages lying eastward of the Kali River as an integral part of Nepalese territory. Besides other pieces of evidence, the population's loyalty is one of the major benchmarks that confirm that the villages are parts of Nepalese territory. The following maps provide another set of concrete proofs.

Map (sketch) of 1819: A sketch of Kumaun prepared by Captain H.S. Bebal was submitted to the Survey Department of India in 1819 establishing that the *Kali River* stated by the Sugauli Treaty originates at Limpiyadhura. This sketch is primarily important and crucial in the eyes of

⁹⁶ Francis Buchanan Hamilton, *An Account of the Kingdom of Nepal* (CreateSpace Independent Publishing Platform 2014).

International law because it had been worked out to implement the Sugauli Treaty. No cartographic manipulation or change can, therefore, be valid against the outlines and spirit of this sketch. No manipulation carried out against the sketch can claim legitimacy or validity for demarcation of North-Western border-line between Nepal and India; the sketch is the irrefutable, core, and primary evidence. Any attempt of India to prove otherwise against the sketch would be futile. The Sugauli Treaty is the primary document granting territorial ownership to Nepal over the Kali River-eastward land and the Bebal's map is a border-line demarcation instrument drawn up to implement the Sugauli Treaty. The sketch provides crucial evidence about Nepal's effective control over the land. In the eyes of International law, the sketch forms the main evidence of the North-West borderline between Nepal and India, and to act against this evidence gives rise to the violation of the UN Charter's Article 2.

Map of 1827: The sketch prepared by the East India Company Hydrographer Jems Host Serge is crucial evidence. This map was developed under the authority of the British Parliament Act showing that the river originates at Limpiyadhura as the Kali River. This map validates the sketch of Bebal; Babel's sketch forms a legal document that India cannot change unilaterally. Sooner after this, another map was published in 1830. Titled 'Western Province of Hindustan', this map was published in London in 1830. This map also shows Limpiyadhura as the source of the Mahakali River. According to this map, the territory of Nepal is situated to the eastward of the Kali River.

Map of 1834: A map was published by Germany in 1834 with the title of 'the Northern Indian Ardecis', scaling 1 inch equal to 150-miles. It shows that the North-West part of Nepal is Limpiyadhura. This is exactly where the 'Kali River' originates at the height of 18000 ft. As mentioned before, this height was voluntarily chosen by the East India Company to prevent Nepalese troops from encroaching or obstructing British Access to Tibet from the side of Kumaun.

Map of 1835: A map titled *XII Index Map* published in London has also shown in bold line that the 'North-West boundary of the Kingdom of Nepal' is the River originating from Limpiyadhura.

Map of 1837: Another map titled 'Anglo Asian Map', prepared by J.B. Tashin in *Farasi* language, also shows that the Kali River originates from Limpiyadhura as the North-West boundary of the Kingdom of Nepal.

Map of 1841: Similarly, the map titled '*Map of India*', prepared by J.C. Walker and published in the U.K. also presents the Kali River originating from Limpiyadhura as the main tributary of Gogra or Sarju.

Map of 1856: Finally, the map published by the Indian Survey General Office in 1856 also presented the Kali River originating from Limpiyadhura is a border-line River between Nepal and India.

These and other series of maps categorically, suggesting Limpiyadhura as the origin-place of the Kali River, are unjustly ignored by India. These pieces of evidence are the reason behind the persistent decline of India to choose the table for discussion and negotiations. This attitude shows that India wants to prevail based on its superior military strength. The occupation with such an attitude is an underlying element that confirms the attitude of aggression. India is effectively occupying Nepal's land with this attitude, thus implying the existence of the element of aggression. Some other pieces of evidence also help to justify Nepal's claim. Of them, a few to mention are the map titled 'District Almora' published in 1865, 'United Province' published in 1879, 'Nepal, Tibet, and United Province' published in 1881, 'Nepal, Tibet, and United Province' published in 1930, 'Nanda Devi Man Sarobar' published by the USA in 1931, and the 'World Atlas', second edition, published by Russia in the Russian language. These maps suggest that the particular river originating from Limpiyadhura is Kuti-yangdi River in the Tibetan language, and the same Kuti-yangdi River is the North-West borderline between Nepal and India and also the origin or source tributary of the Mahakali River.

In addition to the maps, the following documents also confirm that Nepal's North-West border has been fixed by the Kali River originating from a place called Limpiyadhura:

- a. On 22nd March 1817, J. Adam, the acting Chief Secretary of British Colonial Government at Bengal, wrote a letter to the British Residency of Kathmandu and the Administrator of Kumaun. In this letter, he stated that the area eastward of the Kali River starting from Limpiyadhura is Nepal.⁹⁷ This letter was written and sent to those offices to settle disputes that occurred concerning the ownership of the land now occupied by India because some people from Kumaun (the territory captured by the East India Company from Nepal) claimed that the land-plots in the side of Nepal's villages belonged to them. This issue was raised by the officials of Nepal to the Colonial Government in India immediately. J. Adam responded quickly by confirming

⁹⁷ Bhandari (n 7) 202.

Nepal's claim. The letter passed an order to the concerned officials of Kumaun and the British Resident at Kathmandu to oust the claims of the people from Kumaun on Nepal's side. He wrote, 'The claims of the people from Kumaun were unjustified and unfounded'. Noticeably, the East India Company was one of the parties to the Sugauli Treaty. Hence, its decisions, communications, and agreements about the border-lines fixed by the Sugauli Treaty are binding to the contemporary governments of India either.

- b. The *Secret Letter* from Lord Moria to Secret Committee of the East India Company (1 June 1815), in paragraph 37, categorically mentions: 'The eastern boundary will be the Kali River which rises in the Snowy Mountains and pursues nearly direct southerly course to the plains, where it assumes the name of the Gogra'.⁹⁸ This particular *secret letter* is specific and categorical; it specifically mentions 'the snowy mountains' as the source tributary of the Mahakali River. Hence, the Indian Government's claim is ridiculous as it claims a human-made pond at Kalapani is the origin-tributary of the Mahakali River.
- c. The *Almora Gazette*, an official gazette of Kumaun during the colonial regime, has, in one of its volumes, categorically described Kali River as the borderline. It says, 'On the east from the Kali, from its source of the LipuLekh pass to the plains near Barmdeo, where it assumes the name of Sarada, separates Almora from Nepal'.⁹⁹
- d. The great clusters of snowy peaks divide the great river basins from each other, and the smaller groups separate sections of those basins from each other: thus, Nanda Devi separates the Kali from the Ganges system, and the Yirgnajung and Panchi-chuli minor group separate the affluence of the Kali from each other.¹⁰⁰ This is another assertion confirming the Kali River is the one that originates from Limpiyadhura.
- e. The Kali River on the east has its true source in the Kuthi-Yankti, which after the in-fall of the Kalapani River, takes the name of the *Kali*. The *Kuthi River* (Kali River) has a south-easterly course to the junction.¹⁰¹

⁹⁸ Cox (n 54) 566.

⁹⁹ H. G. Walton, *Almora : a Gazetteer volume XXXV of the District Gazetteers of the United Provinces of Agra and Oudh* (Allahabad, Superintendent, Government Press 1911) 2 <<https://indianculture.gov.in/gazettes/almora-gazetteer-volume-xxxv-district-gazetteers-united-provinces-agra-and-oudh>> accessed 2 November 2020.

¹⁰⁰ Bhandari (n 7) 3.

6.0 Recent Developments Regarding Kalapani/Lipulekh Border Issue

The dispute became more apparent in 2015 when India and China signed an agreement and agreed to open a trade route using the border-line marked by a ‘tri-juncture’¹⁰²—where the territories Nepal, India, and China meet. Both India and China failed to consult with Nepal while agreeing to enter into their memorandum of understanding. The signing of the agreement was disclosed through a joint statement issued on 15th May 2015, during Indian Prime Minister Narendra Modi’s visit to China. According to the joint statement, the two sides had agreed to ‘enhancing border area cooperation through border trade and pilgrimage by people of two countries...’¹⁰³ The statement further said, ‘...The two sides agreed to further broaden this cooperation to transform the border into a bridge of cooperation and exchanges’. In that context, they also agreed to hold negotiations on augmenting the list of traded commodities, and expand border trade at Nathula, Qiangla/Lipulekh Pass and Shipki La.¹⁰⁴ Understandably, the Lipulekh area falls within the territory of Nepal, and the Lipulekh pass includes a tri-juncture border-line. It means that the agreement included Nepal’s territory either.

The first time such MOU between India and China had allegedly been concluded during Chinese Prime Minister Wen Jiabao’s visit to India in April 2005. The news about the MOU instantly flared up concerns in Nepal, pressing the Ministry of Foreign Affairs of Nepal to issue a press release saying that ‘the Government of the People’s Republic of China had informed the Ministry in this regard’. According to that press release, China had clarified the Government of Nepal saying that ‘there is no concern belonging to Kalapani among the documents signed between China and India during the visit of Chinese Premier Wen Jiabao to India’.¹⁰⁵ According to the press release issued by the Ministry of Foreign

¹⁰¹ *ibid* 4.

¹⁰² A report of the Ministry of External Affairs, Government of India, issued on 18 September 2014, discloses that the Memorandum of Understanding was signed between two countries during the State Visit of Chinese President Xi Jinping to India. According to the report, the MOU entitled ‘Memorandum of Understanding between Ministry of External Affairs of the Republic of China and Foreign Affairs of the People’s Republic of China on Opening a New Route for Indian Pilgrimage (Kailash Mansarovar Yatra) to the Tibetan Autonomous Region of the People’s Republic of China’. In the remarks of the report was included the description of Lipulekh as the part of Uttarakhand, India. See, ‘List of Documents Signed During the State Visit of Chinese President Xi Jinping to India’ <<http://mea.gov.in/bilateral-documents.htm?dtl/24012/List+of+Documents+signed+during+the+State+Visit+of+Chinese+President+Xi+Jinping+to+India>> accessed 25 August 2020.

¹⁰³ Joint Statement between India and China during Prime Minister’s Visit to China (15 May 2015), para 28 <http://mea.gov.in/bilateral-documents.htm?dtl/25240/Joint_Statement_between_the_India_and_China_during_Prime_Ministers_visit_to_Chin> accessed 25 August 2020.

¹⁰⁴ *ibid*

Affairs of Nepal, the information provided by the Embassy of the People's Republic of China in Kathmandu said that 'the Chinese side always holds the view that the problem of Kalapani between Nepal and India should be resolved through friendly bilateral consultation and the Chinese side fully understands the concerns of the Nepalese side and respects the sovereignty and territorial integrity of Nepal'.¹⁰⁶

In contrast to the information provided by the Chinese Embassy, however, the joint statement issued on May 15th 2015, during Indian PM Modi's visit to China, on the matter of cooperation between two countries refers to the Lipulekh Pass. According to the source of the Ministry of External Affairs of India, a similar kind of MOU had been signed between India and China during the state visit of President Xi Jinping to India in 2014.¹⁰⁷ Information about these MOUs re-triggered concerns and debates on India's occupation of Nepal's Kalapani area, with bigger intensity. Did China sign these MOUs and issue a joint statement unknowingly? This has still been a question; however, the issue contributed to eroding somehow Nepal's trust in diplomacy with China. Once the information about Indo-China MOU on Lipulekh surfaced, the flood of political statements appeared in Nepal that included appeals sent by Nepal's political parties, lawyers' association, student unions, and civil society organizations to the Indian and Chinese presidents and the UN General Secretary.¹⁰⁸ Most importantly, the MOU underpins the intention of India to occupy the territory. Nepal has opposed diplomatically through letters to both countries. From the clarification of China, it seems that the Chinese side is precisely aware of the fact that 'Lipulekh and Kalapani' are names of the same territory; hence, China acknowledges concerns of Nepal in Kalapani but agreed with India to issue a joint statement concerning 'Lipulekh Pass'. These unwanted developments regarding Lipulekh/Kalapani issue brought a major turn of events in Nepal. Over time, the following events led the issue towards added complication, thus threatening friendly relations between Nepal and India, if the problem is not appropriately addressed:

On 2nd November 2019, India abruptly published a new political map, advertently incorporating the territory to the east of Limpiyadhura, including the entire area of Lipulekh or Kalapani.¹⁰⁹ The publication of the

¹⁰⁵ His Majesty's Government of Nepal, Ministry of Foreign Affairs, Press Release (10 May 2005) <<http://www.mofa.gov.np/en/news/detail64>> accessed 25 August 2020.

¹⁰⁶ *ibid*

¹⁰⁷ List of Documents Signed during the State Visit of Chinese President Xi Jinping to India <<http://mea.gov.in/bilateral-documents.htm?dtl/24012/List+of+Documents+signed+during+the+State+Visit+of+Chinese+President+Xi+Jinping+to+India>> accessed 25 August 2020.

¹⁰⁸ Bhandari (n 74).

map tended to legitimize the act of occupation of the Nepalese territory. The Ministry of Foreign Affairs of Nepal released a press statement on 6th November 2019, formally or officially objecting to the act of India and also calling for the withdrawal of the map and initiating the diplomatic dialogue.¹¹⁰ On 7th November 2019, the spokesperson of the Ministry of External Affairs of India, however, countered Nepal's press release saying, 'Our map accurately depicts the sovereign territory of India'. The spokesperson continued saying, in a weekly media briefing, 'the new map has in no manner revised our boundary with Nepal'.¹¹¹ In response to India's press release, Nepal's Prime Minister, K.P Sharma Oli held an all-parties meeting along with former diplomats, past foreign ministers, and experts on the border issue, on 10th November 2019. This meeting formally declared that the map issued by India would not be acceptable to Nepal and called for a dialogue to settle the outstanding issue promptly through diplomatic means.¹¹² A setback followed from the side of India. The Indian Defence Minister Rajnath Singh inaugurated the 75.54-km long road from Ghatibagar in Dharchula to Lipulek on 8th May 2020, connecting the China Border. This act overruled Nepal's urges for diplomatic dialogues.¹¹³

Consequently, the Ministry of Foreign Affairs of Nepal issued another press release, on 9th May 2020, stating that the Government of India should refrain from carrying out any activities within or inside the territory of Nepal. It also reiterated the call for early diplomatic dialogues to settle the issue.¹¹⁴ On 15th May 2020, Nepal's President Bidhya Devi Bhandari, while presenting annual policies and programs of the Nepal Government for the year 2077/78 in the Federal Parliament, directed the Government to issue a new map of Nepal, including Limpiyadhura and Lipulekh as its territory¹¹⁵ because the earlier map of Nepal had been found mistakenly issued. The situation alarmingly deteriorated when the Indian Army Chief

¹⁰⁹ Survey of India, Department of Science and Technology <www.surveyofindia.gov.in/files/Political%20Map%20of%20India.jpg> accessed 30 July 2020.

¹¹⁰ Ministry of Foreign Affairs Nepal (4 November 2019) <<https://mofa.gov.np/wp-content/uploads/2019/11/Press-Release-4-Nov-2019.pdf>> accessed 30 July 2020.

¹¹¹ Ministry of External Affairs of India (7 November 2019) <<https://mea.gov.in/media-briefings.htm?dtl/32019/Transcript+of+Weekly+Media+Briefing+by+Official+Spokesperson+November+7+2019>> accessed 30 July 2020.

¹¹² Ministry of Foreign Affairs Nepal <<https://mofa.gov.np/wp-content/uploads/2019/11/Press-Release.pdf>> accessed 30 July 2020.

¹¹³ Press Information Bureau India <<https://pib.gov.in/PressReleasePage.aspx?PRID=1622091>> accessed 30 July 2020.

¹¹⁴ Ministry of Foreign Affairs Nepal <<https://mofa.gov.np/press-release-regarding-lipu-lekh/>> accessed 30 July 2020.

¹¹⁵ Office of President of Nepal <<https://www.presidentofnepal.gov.np/?p=4128>> accessed 30 July 2020.

Mr. Manoj Mukund Naravane, through a webinar organized on 15th May 2020 by the Institute for Defense Studies and Analysis, alleged Nepal of irresponsibly acting on the ‘behest of someone’, indirectly referring to China. He meant to say that Nepal’s act of issuing a new map was directed by China against India.¹¹⁶ Rejecting the allegation of the Indian Army Chief, Nepal’s Council of Minister of Nepal, on 18th May 2020, decided to publish a new political and administrative map of Nepal,¹¹⁷ which eventually came into being from the date of 20th May 2020, after approval of the Constitution Amendment Bill by the Parliament of Nepal. On 21st May 2020, the spokesperson for the Ministry of External Affairs of India described the act of Nepal as unilateral and unacceptable.¹¹⁸ This was the exact and concrete plea of Nepal in the past; unilateral publication of the map by India was unacceptable to Nepal either. Despite the protests, Nepal continued its momentum and on 18th June 2020, amended its constitution to incorporate the new map. Nepal’s President Bhandari assented to the 2nd amendment of the Constitution of Nepal, thus incorporating the new map of Nepal into the official emblem of Nepal.¹¹⁹

7.0 Relevant Treaties

The historical treaties discussed above serve as necessary evidence justifying Nepal’s claims over the territory, unlawfully occupied by India. From the vantage point of international law, these treaties constitute the legitimate sources or bases for determining the ‘ownership and effective control’ of Nepal’s over the territory occupied by Nepal. We are aware that India has never refused to accept the legitimacy of colonial rule; it has rather categorically accepted the legitimacy of many treaties the regime had concluded with other countries, including Nepal. Hence, according to its standards, India is bound to accept the authority and legitimacy of those treaties that have historically determined or demarcated the border-lines between Nepal and India. Since India has accepted the legitimacy of the Simla Conference and Treaty (1913-14) regarding the demarcation of the border with China, it cannot refuse to accept the border-line demarcated by the Sugauli Treaty between East India Company and Nepal. India’s obligation under international law to respect the borderline demarcated by the Sugauli Treaty is absolute.

¹¹⁶ Manohar Parrikar Institute for Defense Studies and Analysis <<https://idsa.in/event/talk-by-gen-manoj-mukund-naravane>> accessed 30 July 2020.

¹¹⁷ Government of Nepal, Office of Prime Minister and Council of Ministers <<https://www.opmcm.gov.np/download>> accessed 30 July 2020.

¹¹⁸ Ministry of External Affairs India <[www.mea.gov.in/media-briefings.htm?dtl/32699/ Transcript_of_Media_Briefing_by_Official_Spokesperson_May_21_2020](http://www.mea.gov.in/media-briefings.htm?dtl/32699/Transcript_of_Media_Briefing_by_Official_Spokesperson_May_21_2020)> accessed 30 July 2020.

¹¹⁹ Government of Nepal <www.presidentofnepal.gov.np/?p=4171> accessed 30 July 2020.

Both Nepal and India are parties to the Vienna Convention on the Law of Treaties 1969, which recognizes the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations.¹²⁰ The preamble of the Vienna Convention on the Law of Treaties fully recognizes the principles of international law embodied in the Charter of the United Nations, such as the principles of self-determination of peoples and the sovereign equality and independence of all States. The principle of non-interference in the domestic affairs of States and the prohibition of the threat or use of force obliges states to abide by the provisions of the treaties concluded. Article 31 (1) of the Convention requires states or parties to the treaty to interpret the ‘treaty provisions’ in good faith, following the ordinary meaning to be given to the terms of the treaty in their context and the light of its object and purpose. Article 31, through sub-article (2) and (3), of the Convention binds states to pay respect to the agreements established by the treaties and to pay heed to the subsequent agreements and practices. From these principles laid down by the Convention, both Nepal and India are unquestionably bound to follow the agreements outlined in the Sugauli Treaty of 1816 and other relevant treaties discussed below.

Sugauli Treaty 1816: Article 5 of the Sugauli Treaty states that ‘the Rajah of Nepal renounces for himself, his heirs, and successors, all claim to, or connection with the provinces lying to the west of the River Kali and engages never to have any concern with those provinces or the inhabitants thereof’. In line with article 5 and its commentary in the treaty as a whole can be summarized in the following propositions, exploring its various facets:

Under article 5, the Kali River is the explicit North-western boundary between Nepal and India, of which origin can be geographically and hydro-logically, in addition to countless maps and historical documents, traced at the place called Limpiyadhura. Article 5 of the Sugauli Treaty is, therefore, a binding instrument upon India, under the preamble as well as the sub-articles (1), (2), and (3) of Article 31 of the Vienna Convention on the Law of Treaties.

Nepal had ample grounds to refute the legality of the Sugauli Treaty and place its sovereign claims over the two provinces that had been unjustly occupied by the East India Company. Under international law, in the context of Article 1 and 2 of the UN Charter, India would have been obliged to return the territory to Nepal because these territories had never

¹²⁰ Vienna Convention on the Law of Treaties, Preamble (23 May 1969) <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> accessed 22 August 2020.

been under any princely states of India; they had historically been parts of kingdoms ruled by 'united or fragmented kingdoms' once within the sovereign kingdom of Nepal. As India stood as an integrated sovereign nation after independence, Nepal had the same privilege to integrate its territories forcefully occupied by the colonial regime. The East India Company, by its name and its function, was a commercial company with the sole motive of business and earning profit. It was established under Britain's law, which regulated the trade in Britain. Hence, the treaty and the act of forfeiting two provinces of Nepal was purely imperialist aggression, thus empowering Nepal to integrate two provinces occupied through a war. Modern or post-independent India was supposed to understand this fact and return the territory to Nepal. However, it chose to step in the colonial footprints and claimed privileges to enjoy over Nepal that had been imposed by the colonial regime. But India failed to act with the spirit of a democratic and anti-colonial nation; it rather pursued the legacy of the colonial regime where it benefited. Imposing constraints on Nepal through the 1950 Treaty of Peace and Friendship was primarily driven by the colonial policy i.e. keeping Nepal's independence guided by India' as done by the colonial government. The treaty was concluded with a sense of strength.

The Treaty of Sugauli was an unequal treaty because a huge territory of Nepal was lost to the colonial regime. As elaborately discussed above, the British colonial regime had forced Nepal to sign the Treaty under compulsion, duress, intimidation, coercion, and threat to further unwanted consequences. The treaty was unilaterally drafted and singularly finalized by the regime. British East India Company had repeatedly warned Nepal of dire consequences had the latter refused to sign it; it had all preparation done to attack Kathmandu with over 150000 soldiers. The regime legitimated the treaty by applying the imperialist doctrine of *dominium*. The treaty restricted Nepal sovereignty either. For example, the East India Company would take the final decision if there were conflicts between Sikkim and Nepal.

Even after the British colonial regime left India, the democratic relatives of India, however, continued to hold the lost provinces and coerced Nepal to submit to the Indian government. Nepal expected free or independent India to come forward and negotiate in this matter and to negotiate on the matter of the return of those provinces. Nepal had sincerely hoped with the Indian leadership that it would firmly respect the sovereignty of Nepal and the right of self-determination of the peoples in those provinces. However, India chose to go against the principles of freedom and the right to self-determination; rather, it began, through the 1950 Treaty, to employ the principle of treating Nepal as a country to be 'guided by India'—a

principle applied by India that ‘Nepal’s independence is to always to be guided by India because, as India believes, its security regime extends to Himalaya’.¹²¹ Given this awkward situation, Nepal implicitly consented to respect the frontiers established by the Sugauli Treaty. This argument leads us to conclude that India, given Nepal’s sovereign control over the lost territory in the past, had no option but to agree on the border-line Nepal has accepted. It means that India has not succeeded more than what the British colonial regime had with it. It also means that India can have no claims on the border-line of what its predecessor—the British colonial regime—had accepted by writings and practice for a long time; India has no authority and right to define or interpret the border-line agreed between the East India Company and Nepal. India’s rejection of the border-line traditionally defined and accepted by Nepal will help open Nepal’s legitimate claim over lost territories because the 1950 treaty of peace and friendship has annulled the Sugauli Treaty.

Indo-Nepal Treaty of Peace and Friendship 1950: After India gained independence from British rule, Nepal and India signed the Treaty of Peace and Friendship in 1950. However, it was not a voluntary choice of Nepal. Nepal had virtually been pressed by Indian leadership to agree on the provisions of the treaty-based on its bigger military and economic strength. Article 1 of the treaty mentions that:

There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity, and independence of each other.

While the 1950 treaty is unequal and does not enhance Nepal’s interest, Article 1 of the Treaty accepts that Nepal is a sovereign nation, and the same has been recognized by India. The significance of the treaty lies in India’s recognition of Nepal’s historical existence as a nation. In other words, the 1950 treaty emerges from the abrogation or termination of the Sugauli Treaty of 1816. It further implies that India accepted the *status quo* existing before 1947 in matters of the boundary. To go against that *status quo* would result in: (a) first, it would open Nepal’s claims over territories lost to the East India Company; and, second, if so, it would nullify the legitimacy of the 1950 treaty.

Similarly, article 8 of the treaty mentions:

¹²¹ Yubaraj Sangroula, *South Asia China Geoeconomics* (Vajra Books 2019).

So far as matters dealt with herein are concerned, this Treaty cancels all previous Treaties, agreements, and engagements entered into on behalf of India between the British Government and Nepal.

Because of these two articles, the following additional comments can be put forward:

If India had concluded the treaty with the spirit of Peace and Friendship, it should have, under article 1 of the Treaty, immediately renounced its claim over the Nepalese territory forcefully annexed by the colonial regime. Thus, Article 8 of the Indo-Nepal Treaty of Peace and Friendship 1950, provides a genuine basis for Nepal to have its claim over the territory lost during the Anglo-Nepal war. At least, the people of these two former Nepalese territories have a genuine right of self-determination, thus being free from Indian control or domination that was imposed by the former colonial regime. However, Nepal has refrained from making such a claim, for whatsoever reason. It means that Nepal, even to its detriment, is committed to respecting the border-line as it was fixed by the Sugauli Treaty and observed accordingly. Nepal chose to respect the legitimacy of the *status quo* established by the Sugauli Treaty of 1816. Yet, Nepal's respect to that *status quo* or compliance with the traditional border-line principle does create an obligation on the part of India to 'stay-back from making claims that go against its predecessor's acceptance or agreement', because India is bound, under article 31 of the Vienna Convention on the Law of Treaties, to respect the agreement through the treaty. However, India, in contradiction to the said article 31, has stepped into the action of occupying Nepal territory, in blatant violation of Article 1 and 2 (4) of the UN Charter.

If India chooses to denounce the Indo-Nepal Treaty of Peace and Friendship, the Sugauli Treaty automatically comes into play according to Article 8 of the 1950 treaty. If India chooses to respect Sugauli Treaty, then its government's act of incorporating Nepal's territory through an act of cartographic manipulation (by the publication of a new map) and holding control of the land constitutes an act of aggression. The principle of succession under international law obliges India to respect the agreements made through treaties concluded in the past. If India chooses to disregard the legitimacy of both treaties, this will create a strong basis for Nepal to put a claim for the return of the two provinces, or at least it will give the right of self-determination to the people Garwal and Kumaun to choose 'if they want to stay with India or make their separate nation'. These comments indicate that both the Sugauli Treaty and the Indo-Nepal Treaty of Peace and Friendship stand in favour of Nepal. From every side, India is in a situation of a double-edged sword in Kalapani matters.

8.0 Should Nepal Internationalize the Issue Calling for the Application of International Jurisdictions?

There seems to be a growing discourse among Nepalese intelligentsia in this question; should Nepal internationalize the issue of Indian aggression in Kalapani or not? The government of Nepal seems to be in favour of resolving the issue through means of diplomatic dialogues rather than internationalizing the issue, and the larger part of the civil society supports the government's stand. While many such border disputes have been resolved through diplomatic dialogue, there are many examples of resolving such issues only through a process of internationalization. According to Article 2(4) of the UN Charter, every Member State must respect the territorial integrity, independence, and sovereignty of others. Since India is also a member of the United Nations, its repeated encroachment of Nepal's territory violates international law under the Charter. Hence, India has the primary responsibility to avoid tricks and sit-down honestly for seeking an agreeable solution; India's failure will eventually drag Nepal into international platforms to seek justice. Hence, the issue of internationalization is an issue contingent upon the attitudes of Indian rulers and intellectuals.

9.0 Conclusions: Nepal has Three Major Options to Pursue

The first option available to Nepal is to bring about the removal of the Indian armed force through high-level dialogue with the Indian counterpart. Article 33 of the Charter of the United Nations makes it clear that if there is a dispute between the countries over some issue, the parties involved must resolve the issue peacefully. Article 33 (1) specifies some stages, procedures, and criteria for a peaceful solution, the first of which, the most profound one, is to chalk out an agreement through negotiation between parties themselves. Therefore, Nepal ought to adopt the measure of effective and vigilant diplomacy with adequate evidence and the services of experts and hold result-oriented talks with the Indian counterpart.

The second option available for Nepal is, in case of India's decline to have dialogue, to resort to the process of mediation through good offices of the United Nations Security Council under Article 33 (1) of the Charter. Under this article, the Member States are obligated to solve the problem peacefully. This option is costly and time-consuming. Moreover, this process demands intelligence, quality of expertise, and dedication on the part of the government.

A third party-resolution mechanism can be resorted to with the mutual consent of the two countries. This mechanism may consist of a mediator or a panel of mediators under the aegis of the Secretary-General of the United Nations. Similarly, the United Nations may set up a Fact-Finding Mission to conduct inquiry or investigation on the issue. Nepal can try persuading India to go for this mechanism. If India declines to cooperate in this process, Nepal can unilaterally resort to taking the dispute to the United Nations. According to Article 38 of the Charter of the United Nations, the United Nations Security Council has the power to make recommendations for the peaceful settlement of disputes by facilitating mediation. According to Articles 92 and 93 of the Charter, the International Court of Justice is the main judicial body applicable to all member states. This mechanism may be resorted to by Nepal as a last resort. Under this mechanism, the issue should be taken up by Nepal as a party to the case against the aggression of India, resulting in the occupation of Nepalese territory. According to Article 94 of the Charter, the decision of the court is binding and final on both sides. The important question in this regard is whether the International Court of Justice has jurisdiction over this issue between Nepal-India. In this regard, India has opted for reservation in its Declaration of Compulsory Jurisdiction of the International Court of Justice in cases of border disputes. I have argued before, however, that this is not only a border dispute—it is an act of aggression through the illegal occupation of a territory. The International Court of Justice ruled that no nation could unilaterally violate the territory of other countries through its decision on the *Temple of Preah Vihear Case* (1962) between Cambodia and Thailand.¹²²

What follows from the above discussion is that among the various options given by the law, the Government of Nepal should take the lead in resolving the border dispute through diplomatic channels. Since India has been a close neighbour geographically, linguistically, religiously, and culturally since time immemorial, diplomatic efforts should be given priority in the interest of both the countries and India should be requested to withdraw its claim over the territory. Failing that, however, Nepal should see the option of resorting to the ICJ mechanism as a last resort, with a claim of India's aggression against Nepal, on the following grounds:

¹²² *Temple of Preah Vihear* (Cambodia v Thailand), Merits, ICJ Report 1962, 6.

- a. Principle of Acquisition of Territory under International Law: Several boundary treaties have clarified the extent of territory of any state. The treaty establishes an objective territorial regime that continues to exist even after the treaty in question ceases to exist. This principle is established to create stability of boundaries.¹²³ Special Rapporteur Humphrey Waldock has clarified that boundary treaties create an objective regime, and this regime creates *erga-omnes* obligation for all states.¹²⁴ In the present case, the Sugauli Treaty is a boundary treaty that establishes the boundary between Nepal and India for more than two centuries. This has created an objective regime, and therefore, the non-existence of the Sugauli treaty does not make the boundary between two countries invalid. Otherwise, this would not create stability for the boundary between Nepal and India.

- b. Principle of effective control: One of the strong pieces of evidence proving the territorial claim lies in the exercise of effective authority over a territory. This principle has been emphasized in Territorial Sovereignty and Scope of the dispute between Eritrea and Yemen, where the Tribunal noted: ‘The modern international law of the acquisition (or attribution) of the territory generally requires that there be an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions, on a continuous and peaceful basis’.¹²⁵

- c. Principle of Statehood: A mixture of fact and law, along with the establishment of particular factual conditions and the compliance of relevant rules, is a process to create state ownership and sovereignty.¹²⁶ Those accepted standards and criteria are mentioned in Article 1 of the Montevideo Convention on the Rights and Duties of States 1933. It provides that a state must possess a permanent population, a defined territory, a government, and the capacity to conduct international relations. A government has to qualify certain elements like effectiveness, independence and has to be the democratically legitimate authority. All these criteria have been enlisted and explained above.

¹²³ Malcolm N. Shaw, *International Law* (Seventh edn, Cambridge University Press 2014) 356.

¹²⁴ Humphrey Waldock, ‘Third Report on the Law of Treaties’ (1964) II Yearbook of the International Law Commission 28.

¹²⁵ Eritrea v Yemen, Award on Territorial Sovereignty and Scope of the Dispute, (1998) XXII RIAA 211, (1999) 119 ILR 1, (2001) 40 ILM 900, ICGJ 379 (PCA 1998), 9th October 1998, Permanent Court of Arbitration [PCA].

¹²⁶ James Crawford, ‘The Criteria for Statehood in International Law’ (1976) 48 (1) British Yearbook of International Law 93-182.

It is self-evident from the ample historical pieces of evidence, provisions of the Sugauli Treaty, maps published by the British Government, and other pieces of evidence that the genesis of Mahakali River or the Kali River is unquestionably set at Limpiyadhura, which represents, thus, the legitimate North-West border-line between Nepal and India. These different sets of evidence require the government of India to withdraw its force from Kalapani, promptly and immediately provided that it tends to respect the UN Charter as a nation seeking a birth at the Security Council. Its failure to do so will be a 'serious stigma' for its claim of the significant country in international affairs. The burden of proof showing that India has not crossed the line of obligation for restraining from aggression under the UN Charter surely lies in the Indian Government. Lastly, India has no moral or legal ground to suggest the authenticity of its claim over Nepalese territory going by its own established standards of border delimitation with other neighbours. Rejecting to abide by agreements under the Sugauli Treaty of 1816 with Nepal will repudiate its claim for legitimacy on the principle of McMahon line based on the Simla Treaty of 1914.

REFERENCES

International Instruments

- Indo-Nepal Treaty of Peace and Friendship 1950.
- Malaun Convention 1815.
- Montevideo Convention on the Rights and Duties of States 1933.
- Sharda Treaty 1920.
- Simla Treaty 1914.
- Sugauli Treaty 1816.
- UN Charter 1945.
- Vienna Convention on the Law of Treaties 1969.

Cases

- Eritrea v Yemen, Award on Territorial Sovereignty and Scope of the Dispute, (1998) XXII RIAA 211, (1999) 119 ILR 1, (2001) 40 ILM 900, ICGJ 379 (PCA 1998), 9th October 1998, Permanent Court of Arbitration [PCA].
- Temple of Preah Vihear (Cambodia v Thailand), Merits, ICJ Report 1962, 6.

Books

- Acharya B, *Chin Tibbat ra Nepal (China, Tibet and Nepal)* (Fine Prints Nepal 2017).
- Bhandari R, *Atikraman ko Chapetama Limpiyadhura-Lipulekh (Limpiyadhura and Lipulesk in Siege of Agression)* (Ratna Books 2073 B.S).
- Chakraborti H, *Trade and Commerce in Ancient India (C. 200 B.C. - C. 650 A.D.)* (Academic Publishers 1966).
- E. H. Walsh, *The Coinage of Nepal* (Reprint, South Asia Books 1990).
- Fuhrer A A, *The Monumental Antiquities and Inscriptions : in the North-Western Provinces and Oudh*, v 2 (Indological Book House 1891).
- Hamilton F B, *An Account of the Kingdom of Nepal* (CreateSpace Independent Publishing Platform 2014).
- Khanduri C B, *A re-discovered history of Gorkhas* (Gyan Sagar Publication 1997).
- McDougal M S and Feliciano F P, *Law and Minimum World Public Order : The Legal Regulation of International Coercion* (Yale 1961) 171-184.
- Moon P, *The British Conquest and Dominion of India* (Duckworth Publishing 1989).
- Nepal P, 'Brihad Bichar Greater Nepal' 3 *Swabhimani Patrika* (2064 B.S).
- Pandey V C, *Prachin Bharat ka Itihas : A Manuscript in Department of Archaeology of Nepal* (S. Chand Publishing 2003).
- Qingying C, *Tibetan History: Series of Basic Information of Tibet of China* (China Intercontinental Press 2003).
- Regmi D R, *Ancient Nepal* (Rupa & Co 2007).
- Sangroula Y, *Gorkha Brigade: 1814-2014* (Nepali Edition, Lex 2019) <www.ratnabook.com/3002-gorkha-brigade-1814-2014.html> accessed 05 May 2020.
- —, *South Asia China Geoeconomics* (Vajra Books 2019).
- Sharma G R, *B P Koirala Ko Aatmabritanta* (An Autobiography of B.P. Koirala) (2nd edn, Addamba Prakashan 1999).
- Shaw M N, *International Law* (Seventh edn, Cambridge University Press 2014).
- Shrestha B, 'Nepalko Sima Sambandhi Bibechana' (translation: Analysis Relating to Nepal's Border) in Karki B B and others, *Nepal, India and China Treaties* (2075 B.S).
- Shrestha D B and Singh C B, *The History of Ancient and Medieval Nepal in a Nutshell : with Some Comparative Traces of Foreign History* (HMG Press 1972).

- Shrestha H L, *Sixty Years of Dynamic Partnership, Kathmandu: Nepal China Society* (2000).
- Ušacka A, 'Foreword' in Sergey Sayapin (ed), *The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State* (T.M.C. Asser Press 2015).
- Vajracharya D and Shrestha T B, *Panchali Sasan Ko Aitihāsik Bibechana* in Hamal L B, 'Economic History of Nepal: From Antiquity to 1990' (Semantic Scholar 1996).
- Walton H G, *Almora : a Gazetteer volume XXXV of the District Gazetteers of the United Provinces of Agra and Oudh* (Allahabad, Superintendent, Government Press 1911) <<https://indianculture.gov.in/gazettes/almora-gazetteer-volume-xxxv-district-gazetteers-united-provinces-agra-and-oudh>> accessed 2 November 2020.

Journal Articles

- Baral L R, 'Nepal India Relations: Continuity and Change' (September 1992) 32 (9) *Asian Survey* 815-829.
- Baral T Y, 'Border Disputes and Its Impacts on Bilateral Relations: A Case of Nepal India International Border Management' (2018) 1 (1) *Journal of APF Command and Staff College* 35.
- Paudyal G, 'Border Dispute between Nepal and India' (2013) 1(2) *Researcher: A Research Journal of Culture and Society* 25-48.

Newspaper Articles

- 'Kalapani Dispute: All You Need to Know' *The Times of India* (3 January 2020) <<https://timesofindia.indiatimes.com/india/the-kalapani-dispute-all-you-need-to-know/articleshow/73078440.cms>> accessed 22 August 2020.
- Prasain S, 'Nepal is 19th largest receiver of remittances with \$ 8.1 billion' *The Kathmandu Post* (Kathmandu, 10 April 2019) <<https://kathmandupost.com/money/2019/04/10/nepal-is-19th-largest-receiver-of-remittances-with-81-billion>> accessed 22 August 2020.
- Subedi R R, 'Prithivi Thought-I Respect All Faiths & Cultures' *The Rising Nepal* (22 August 2002) <<http://therisingnepal.org.np/news/27570>> accessed 22 August 2020.
- —, '250th Anniversary of the Sindhuli Gadhi Victory: How Gorkhalis Thrashed British' *The Rising Nepal* <<http://therisingnepal.org.np/news/20654>> accessed 22 August 2020.

Internet Materials and Others

- Cox J L, *General List of Papers—Papers Relating to Nepaul War* (Indian Office Library 1824) (Secret Letter from Lord Moira, 22 May 1815) 559.

- Crawford J, 'The Criteria for Statehood in International Law' (1976) 48 (1) British Yearbook of International Law 93-182.
- 'Definition of Aggression : General Assembly Resolution 3314 (XXIX)' <https://legal.un.org/avl/pdf/ha/da/da_ph_e.pdf> accessed 23 December 2020.
- Government of Nepal <www.presidentofnepal.gov.np/?p=4171> accessed 30 July 2020.
- — —, Office of Prime Minister and Council of Ministers <<https://www.opmcm.gov.np/download>> accessed 30 July 2020.
- His Majesty's Government of Nepal, Ministry of Foreign Affairs, Press Release (10 May 2005) <<http://www.mofa.gov.np/en/news/detail64>> accessed 25 August 2020.
- Indo-Tibetan Border Police Force, 'Origin of ITBP, the 'HIMVEERS' and National Security' <www.itbpolice.nic.in/Aboutus_new/history&role/history&role.html> accessed 4 December 2019.
- Joint Statement between India and China during Prime Minister's Visit to China (15 May 2015), para 28 <http://mea.gov.in/bilateral-documents.htm?dtl/25240/Joint_Statement_between_the_India_and_China_during_Prime_Ministers_visit_to_Chin> accessed 25 August 2020.
- List of Documents Signed during the State Visit of Chinese President Xi Jinping to India <<http://mea.gov.in/bilateral-documents.htm?dtl/24012/List+of+Documents+signed+during+the+State+Visit+of+Chinese+President+Xi+Jinping+to+India>> accessed 25 August 2020.
- Manohar Parrikar Institute for Defense Studies and Analysis <<https://idsa.in/event/talk-by-gen-manoj-mukund-naravane>> accessed 30 July 2020.
- Ministry of External Affairs of India (7 November 2019) <<https://mea.gov.in/media-briefings.htm?dtl/32019/Transcript+of+Weekly+Media+Briefing+by+Official+Spokesperson+November+7+2019>> accessed 30 July 2020.
- — — <www.mea.gov.in/media-briefings.htm?dtl/32699/Transcript_of_Media_Briefing_by_Official_Spokesperson_May_21_2020> accessed 30 July 2020.
- Ministry of Foreign Affairs Nepal (4 November 2019) <<https://mofa.gov.np/wp-content/uploads/2019/11/Press-Release-4-Nov-2019.pdf>> accessed 30 July 2020.
- — — <<https://mofa.gov.np/wp-content/uploads/2019/11/Press-Release.pdf>> accessed 30 July 2020.
- — — <<https://mofa.gov.np/press-release-regarding-lipu-lekh/>> accessed 30 July 2020.

- Nepal 7th largest source of remittance for India, Center for the Study of Labour and Mobility (28 September 2015) <www.ceslam.org/news/6902> accessed 16 January 2021.
- 'Nepali Economic Relations with British India after Unification of Nepal' <http://shodhganga.inflibnet.ac.in/bitstream/10603/168019/8/08_chapter%201.pdf> accessed 4 May 2018;
- Office of President of Nepal <<https://www.presidentofnepal.gov.np/?p=4128>> accessed 30 July 2020.
- Pandey R N, 'The Ancient and Medieval History of Western Nepal' *Ancient Nepal* 45-55 <http://himalaya.socanth.cam.ac.uk/collections/journals/ancientnepal/pdf/ancient_nepal_11_07.pdf> accessed 4 December 2019.
- Press Information Bureau India <<https://pib.gov.in/PressReleasePage.aspx?PRID=1622091>> accessed 30 July 2020.
- Rajan K V (2000), 'India will withdraw from Kalapani if it is proved to be in Nepal', (Interviewer), Kantipur Daily, 14 June 2000.
- Rana J B, 'Shree Tinharuko Tathya Britanta' Part 2 (Factual Details of Rana Prime Ministers 2006) 111.
- 'Secret Letter from Lord Moira, 1 June 1815 to the Bengal Government Secretary' in J. L. Cox, *General List of Papers—Papers Relating to Nepal War* (Indian Office Library 1824).
- Survey of India, Department of Science and Technology <www.surveyofindia.gov.in/files/Political%20Map%20of%20India.jpg> accessed 30 July 2020.
- — — <www.surveyofindia.gov.in/files/Political%20Map%20of%20India> accessed 4 December 2019.
- United Nations, 'Historical Review of Developments relating to Aggression' (United Nations Publication 2003) xvii <www.un.org/law/books/HistoricalReview-Aggression.pdf> accessed 7 January 2021;
- United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Codification Division Publications 1998), Annex I, Resolution F <https://legal.un.org/diplomaticconferences/1998_icc/> accessed 7 January 2021.
- Waldock H, 'Third Report on the Law of Treaties' (1964) II Yearbook of the International Law Commission 28.
- Wilson P L, 'The International Politics of Aggression: An Historical Analysis' (PhD Thesis in International Relations, London School of Economics 2007) 9.