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## UN Support for Peacebuilding: Nepal as the Exceptional Case

Astri Suhrke

**WP 2009:7**



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## 1. Introduction\*

For the past two decades the UN peacebuilding regime to assist societies emerging from civil war has steadily become more expansive, intrusive, integrated and visible. Most peace support operations now are multidimensional – covering the security sector, political transition, relief and economic recovery, statebuilding, and transitional justice – and target the underlying causes of conflict as well. Peacebuilding means ensuring that “exclusionary social, economic and political structures ... [are not] left untouched, perpetuated or strengthened,” UN Secretary-General Kofi Annan declared when he inaugurated the UN Peacebuilding Commission in 2006.<sup>1</sup> The language seemed tailor-made for Nepal, where the UN established a peace mission after the end of a ten-year civil war. Fuelled by many causes, the war developed against the backdrop of exclusionary structures in social, economic and political life, most of which remained intact when the peace agreement was signed in 2006. Yet the UN operation to help consolidate peace was not designed as a multidimensional peacebuilding mission. Rather, it had a razor-thin mandate. As ‘a special political mission’ of limited duration, UNMIN (United Nations Mission in Nepal) did not even have peacekeepers or an explicit ‘good offices’ function to mediate in old or new conflicts. UNMIN thus belonged to a small category of UN peace operations. Out of slightly more than 50 operations in 2008, only perhaps half a dozen were similarly minimalistic.<sup>2</sup>

This paper explores why this was so, and what were the consequences for peacebuilding. The point of departure is the common claim in much of the academic literature that broad international support to consolidate peace in a post-war setting is critically important and, while not sufficient, has a necessary quality.<sup>3</sup> The claim - which has provided intellectual underpinning for the remarkable expansion of the international peacebuilding regime in the post-Cold War world - suggests that either Nepal is truly an exceptional case, or the peace process is highly vulnerable.

There is, however, a different perspective. Increasingly, the consensus in the aid community is that peacebuilding, like development, requires a core of local ownership if it is to succeed. A recent UN report that codified the collective and received knowledge about peacebuilding emphasized the critical importance of national ownership.<sup>4</sup> This perspective has a rich intellectual tradition as well, particularly in the development literature.<sup>5</sup> If correct - and if the

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\* The author is grateful for detailed comments on an earlier draft by Magnus Hatlebakk, Ian Martin, Chaitanya Mishra, and Teresa Whitfield. The author remains responsible for the final formulation.

<sup>1</sup> Inaugural session 23 January 2006, [www.accessmylibrary.com/coms2/summary\\_0286-32294694\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-32294694_ITM)

<sup>2</sup> Other small UN missions were located in Somalia and Guinea Bissau, and 3 political missions covering a region, consisting of a one-person type office. [www.un.org/dpa](http://www.un.org/dpa)

<sup>3</sup> For instance, Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace. United Nations Peace Operations*. Princeton: Princeton University Press, 2006; James D. Fearon, and David D. Laitin. "Neotrusteeship and the Problem of Weak States," *International Security*, vol.28( 4 ), Spring 2004, pp.5-43; Stephen Krasner, "Shared Sovereignty: New Institutions for Collapsed and Failing States," *International Security*, vol. 29(2), Fall 2004, pp. 85-120; Paul Collier et al., *Breaking the Conflict Trap. Civil War and Development Policy*. New York: Oxford University Press, 2003; Stephen John Stedman et al., (eds.), *Ending Civil Wars*, Boulder, Colo.: Lynne Rienner, 2002; Barbara F. Walter, "Critical Barrier to Civil War Settlement," *International Organization*, vol. 51, no. 3 (Summer 1997).

<sup>4</sup> *Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict*. 11 June 2009. A/63/881-S/2009/304

<sup>5</sup> The literature is vast. For a summary see Mick Moore and James Putzel, "Thinking Strategically about Politics and Poverty," Brighton: IDS Working Paper 101, 2000; for donor perspectives, OECD/DAC, *Shaping the 21st Century Paris*: OECD, 1996; for a southern perspective, Rehman Sobhan, "Aid Effectiveness and Policy Ownership," *Development and Change* vol. 33 (3), 2002, pp. 539-548; and for ownership in a broader critique of

national ‘owners’ indeed are dedicated to peace, as the theory seems to assume – it suggests a measured and moderate role for international assistance. Although aid in theory can promote national ownership, in practice the two are often conflictual insofar as external aid tends to encourage dependence, ‘crowd out’ rather than ‘crowd in’ national efforts, or produces a false sense of partnership.<sup>6</sup> In this perspective, the prospects for peace in Nepal would seem bright: it is widely accepted that the Nepalese have succeeded in maintaining a great deal of national ownership over both the civil war and the peace process that followed.

Either way, the Nepalese case is worth exploring. The analysis below is built around a thick historical narrative. It starts with the war and the tortuous process of negotiating peace, which is the genesis of Nepalese claims to national ownership and the minimalist UN mission.

## 2. Ending the war

Nepalese exceptionalism starts with the war. A faction of the Communist Party of Nepal (Maoist) launched a People’s War in 1996, well after most communist parties and states elsewhere in the world had collapsed. The party, CPN(M), was a home grown movement of strongly nationalist revolutionaries. Outside Nepal they were only supported by solidarity networks of revolutionary splinter groups in India and a few other countries. Their ideology was familiar to Naxalites and other radical-left movements in the subcontinent, but otherwise seemed a faint echo of revolutionary struggles that belonged to a previous era in Asia and Latin America. The leaders came from Brahmin hill castes of modest means (although not so poor that they could not afford to educate their sons). The section of the party that split off to declare People’s War had only a handful of followers and, it was said, two rifles.<sup>7</sup> Metaphorically that seems true. Ten years later, when the Maoists signed a peace agreement and the Peoples Liberation Army (PLA) turned in their arms for UN registration, there were only 3500 weapons. A list compiled a couple of years earlier by Indian intelligence sources showed that most of the arms were old-fashioned 303 rifles (standard issue in the British Commonwealth from 1880 to 1950) and some guns were home-made.<sup>8</sup> They had relatively few semi-automatic rifles and none until they started raiding the armouries of the Nepal Army in late 2001.

The peace process was largely home grown as well. Although unfolding in the constraining shadow of Indian interests, the timing and direction of peace talks were chiefly determined by domestic political forces, that is, the relationship between the King and the mainstream political parties, the ability of the Maoists to adjust strategically to unfolding events, and the mobilization of ‘people’s power’ at a critical juncture.

The insurgency was feeding on numerous sources of discontent – long-standing and systematic social exclusion of low-caste and other marginalized groups, widespread poverty, regional inequities, elite control over the state and its privileges, as well as over the democratic process instituted in 1990, and the often overbearing role of neighbouring India. The Maoists framed their struggle in terms of a 40-point manifesto for social change and a nationalist foreign policy that had served as a declaration of war in 1996, but consistently followed a dual track of political and military struggle. As the party leader, Prachanda (nom

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development cooperation, David Sogge, *Give and Take, What’s the Matter with Foreign Aid*. London: Zed Press, 2002.

<sup>6</sup> Rita Abrahamson, “The power of partnerships in global governance,” *Third World Quarterly*, vol.25 (8), 2004, pp. 1453-67.

<sup>7</sup> Deepak Thapa with Bandita Sijapati, *A Kingdom Under Siege. Nepal’s Maoist Insurgency*. Kathmandu: The Printhouse, 2004, p. 98.

<sup>8</sup> Ashok Mehta, *The Royal Nepal Army*, New Delhi, Rupa&Co.2005, p. 95.



de guerre) later emphasized, the People's War started in the parliament and thus could also end there. "For three years we struggled inside Parliament.... So the seeds of our armed struggle were sown inside Parliament, in a manner of speaking."<sup>9</sup> The party's widely publicized Second National Conference in February 2001 recognized the importance of political mobilization and political struggle in the People's War. With an ideological stance that at least implied the possibility of negotiations, the Conference demanded what was to become a key item in later negotiations - an elected constitutional assembly to draw up a framework for restructuring the state.<sup>10</sup>

The government initially treated the insurgency as a law and order problem, but by the end of the 1990s recognized the need to address its political dimensions. A high-level commission led by a future Nepali Congress (NC) prime minister set up in 1999 to examine "the Maoist problem" concluded that the insurgency sprang from "defects in the handling and management of statecraft...social discrimination, unemployment and economic development".<sup>11</sup> When the head of the commission, Sher Bahadur Deuba, shortly afterwards became prime minister, he staked his political fortunes on the possibility of ending the insurgency through negotiations. At the time, opinion surveys also showed that the public wanted a political solution to the conflict.

The critical event that paved the way for the first formal talks between the rebels and the government lay elsewhere. The Palace massacre on 1 June 2001, in which King Birendra and almost all his family were shot, changed the balance of forces in the organizing triangle of Nepalese politics. It had earlier been surmised that the King and the Maoists had at least a tacit common interest in opposing the mainstream political parties, and a channel of communication had in fact been opened between the two. The national shock over the massacre and rumours that Birendra's younger brother, Gyanendra, soon to become the new King, was complicit in the killings now encouraged the Maoists to explore a possibly common interest with the mainstream parties in limiting the power of the King. The Maoists struck out boldly. "Now is the duty of all nationalist Nepalis to help in the establishment of a republic", the party chief ideologue Baburam Bhattarai wrote.<sup>12</sup> Yet this was still several years in the future. At the time, the Nepali Congress government was firmly against both a republic and the Maoist demand for a constituent assembly. The government was also taken aback when the Maoists just six weeks after the palace massacre showed their strength by abducting 69 policemen. An alarmed government for the first time called in the army to deal with the insurgents. However, the army – still the *Royal Nepal Army* (RNA) with a command structure and organization closely linked to the Palace – dispatched a contingent that chose not to engage the militants. The showdown with the Palace forced Prime Minister G.P. Koirala to resign and opened the door for his party rival, Sher Bahadur Deuba. Prime Minister Deuba declared a cease fire and a month later, in August 2001, the first round of talks between the government and the Maoists opened.

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<sup>9</sup> He continued: "This is a very big difference between us and, say, those in India who say they are waging a people's war. They didn't begin from inside Parliament. We were inside Parliament, so we had good relations with the parliamentary parties for a long time." "Exclusive interview with Prachanda, Maoist leader", with Siddharth Varadarajan of *The Hindu*, conducted at an undisclosed location in the first week of February 2006. <http://www.hinduonnet.com/thehindu/nic/maoist.htm>

<sup>10</sup> The importance of a constitution promulgated by an elected assembly rather than granted by the King had been a central issue in Nepali politics for half a century, and had been an agenda item at the first convention of the original Communist Party of Nepal in 1954. Thapa, *op.cit.*, p.24.

<sup>11</sup> The Deuba Commission, cited in Krishna Hachhethu, "The Nepali State and the Maoist Insurgency, 1996-2001," in Michael Hutt (ed.), *Himalayan People's War: Nepal's Maoist Rebellion*, London: Hurst, 2004, p. 67

<sup>12</sup> Cited in Thapa, *op.cit.* p. 118.

## 2.1 2001-02: Negotiations and return to war

The groundwork for talks had been laid through back-channels arranged by Nepalese intermediaries close to the Nepali Congress party and the Maoists, as well as through direct talks between high-ranking leaders of the two parties.<sup>13</sup> The formal talks started off well despite deep differences over substantive issues, and included a round held in the Maoist stronghold in Western Nepal, an implicit recognition of the *de facto* parallel government of the Maoists. After three months, however, the Maoists abruptly withdrew and re-launched the military struggle with a surprise offensive unprecedented in intensity and scope. PLA units and supporting village militias attacked several government posts, including in the eastern region that until then had been securely in the government zone. They kidnapped and killed district officers, stormed police posts, robbed banks to increase revenues, and for the first time attacked an army post. Quickly overwhelming the RNA, they carried off 12 truckloads of arms, including modern, semi-automatic weapons that significantly upgraded the PLA's equipment standards. Maoist leader Prachanda later described the attack on the army barrack in the mid-western Dang district as a turning point in the war.<sup>14</sup>

The attack on the army barrack took place only two days after the Maoists had called off the negotiations. The timing strongly suggested that the Maoists had used the negotiations and the four-month long cease-fire to prepare for a new offensive. Denying this, the Maoists justified their withdrawal from the talks by citing firm NC opposition to their principal demands – institution of a republic, election of a constituent assembly, and renegotiation of the 1950 unequal Treaty with India.<sup>15</sup>

The breakdown in talks signalled a new round of war, now fuelled by international developments. When the Maoists returned to the armed struggle in November 2001, the United States and its allies had just launched a global 'war on terror' to avenge the 9/11 attacks on the US. In Nepal, prime minister Deuba, stung by what he considered a betrayal of his commitment to a negotiated solution, quickly branded the Maoists 'terrorists' and proclaimed a state of emergency. A 'long year' of escalating violence followed. The US and the British governments started to provide military assistance the Nepal Army, and the Indian government sharply upgraded its existing assistance program. The Bush-administration placed the Maoists on various sanction-inducing lists of 'terrorists', and the Nepalese parliament passed anti-terrorist legislation aimed at both party members and their supporters. An armed police force was established to battle the Maoists, and regular army units were deployed as well. The militants nevertheless kept pace by counterattacking and expanding the war geographically. Maoist front organizations staged strikes and demonstrations in the urban areas, including the capital. For the country as a whole, the enormous costs of a civil war were brought home.<sup>16</sup>

<sup>13</sup> For a detailed analysis of the talks, with an emphasis on the international role, see Teresa Whitfield, *Masala Peacemaking. Nepal's Peace Process and the Contribution of Outsiders*, New York, October 2008. [http://www.cic.nyu.edu/staff/Staff%20Docs/Teresa%20Whitfield,%20Masala%20peacemaking%20in%20Nepal,%202010\\_%202008.pdf](http://www.cic.nyu.edu/staff/Staff%20Docs/Teresa%20Whitfield,%20Masala%20peacemaking%20in%20Nepal,%202010_%202008.pdf)

<sup>14</sup> Anirban Roy, *Prachanda. The Unknown Revolutionary*, Kathmandu: Mandala Book Point, c. 2008, p.71.

<sup>15</sup> The demand for a republic had been too much even for the smaller leftist-communist parties. Prachanda had met with them in West Bengal just prior to the formal talks with the government and in vain asked them to support the abolition of the monarchy. Whitfield, *op.cit.*

<sup>16</sup> For different perspectives on the costs of the war, see Thapa, *op.cit.* pp. 139-157, Mukta S. Lama-Tamang, Sumitra M. Gurung, Dharma Swarnakar, and Sita Rana Magar. 2003. *Social Change in Conflict Areas:*

*Assessment Report.* Prepared for UK Department for International Development (DFID) Nepal, and The World Bank, *Resilience Amidst Conflict: An Assessment of Poverty in Nepal, 1995-96 and 2003-4.*

[http://siteresources.worldbank.org/INTNEPAL/Resources/Resilience\\_Amidst\\_Conflict.pdf](http://siteresources.worldbank.org/INTNEPAL/Resources/Resilience_Amidst_Conflict.pdf)

Yet the door to negotiations was kept ajar. “[W]e are ready to be involved in talks, dialogue, fronts or show any kind of flexibility....We have never closed the door for talks to find a political solution and we will never do so in the future,” Prachanda declared on the 6<sup>th</sup> anniversary of the People’s War in February 2002.<sup>17</sup> The principal impetus to a new halt in the war once again came from the Palace. King Gyanendra had progressively asserted his power vis-à-vis the parliament and the mainstream political parties and in October 2002 executed a mini-coup by centring executive authority in the Palace. The changing balance in the triangle again led to negotiations where the parties could feel each other out and explore alignments. The Maoists, according to some reports, were now more interested in negotiating with the King than with the mainstream parties. A ceasefire in January 2003 was followed by informal talks and then formal negotiations (May-August).

## 2.2 2003-04: More negotiations and another round of war

The 2003 negotiations took place in Kathmandu, and, as during the previous round, focused on the Maoist demands for an elected constituent assembly and a republic. The government, now led by prime ministers from a small, royalist party (RPP), rejected both. The break-down of the talks, however, was triggered by the army killing of 19 Maoists after capture in what appeared as a deliberate attempt to sabotage the peace process. In Kathmandu, the Maoists continued negotiations for ten more days before declaring on 27 August 2003 that the ceasefire was over.

Another ‘long year’ of war followed. The Maoists now demonstrated a ‘phenomenal’ ability to mount large-scale attacks, using ‘stealth, distraction, storm tactics and lightning speed’, an Indian military analyst wrote.<sup>18</sup> Yet by the end of the year their scheduled move to a ‘strategic offensive’ was not in evidence. Moreover, while the Maoists could undermine the power of the state in the capital by staging *bandh* and agitations, they could not hope to capture the city and lacked the capacity to capture and hold even provincial centers. Another sign of the party’s vulnerability was the arrest in early 2004 of several high-ranking cadres in India, where Maoist leaders until then had enjoyed de facto sanctuary. On the government side, the signs were also mixed. The Nepal Army was being retrained and outfitted for counter-insurgency operations with assistance from India, the US and the UK, but transforming an army whose previous functions had chiefly been ceremonial and in international peacekeeping was slow and difficult.

The military stalemate brought the possibility of a political dialogue to the surface. Prachanda soon made conciliatory statements. While “we are committed to fighting...let there be no doubt that we are open [for negotiations] to creating an environment whereby people’s mandate, freedom are solicited in a legal manner. This is our humble request.” To underline the emphasis on the dialogue option, Prachanda for the first time called for UN ‘mediation and observation’.<sup>19</sup> By mid-year, ex-prime minister Deuba was reappointed to head the government and one of his first official acts was to appoint a high-level Peace Commission. Sensing an opportunity, major European donors, civil rights and human rights groups and United Nations representatives redoubled their efforts to restart the peace process. A UN official, Tamrat Samuel, had since August 2003 patiently shuttled between New York, Delhi and Kathmandu. Several NGOs that specialized in peace mediation were also offering their services as facilitators and mediators; one organization had been doing so since 2000.<sup>20</sup>

<sup>17</sup> Cited in Thapa, *op.cit.*, p.132.

<sup>18</sup> Mehta, *op.cit.*, pp. 25-26.

<sup>19</sup> Statement, reported in *Kathmandu Post*, 5 February 2004.

<sup>20</sup> See Whitfield, *op.cit.*

The utility of these mediation or facilitation efforts is difficult to assess. The Nepalese used them where it was advantageous to their position. The Maoists, in particular, appreciated the implication of legitimacy bestowed by international attention. UN sources later claimed that its early engagement had helped to introduce ideas of UN monitoring and assistance in relation to cantonment and the elections that eventually found their way into the peace agreement. Mediators of various kinds carried messages and facilitated contact, although by 2004, the Nepalese had already engaged in two rounds of negotiations and did not lack in contact channels. When a new opening for talks appeared in 2005, the Maoists and the mainstream communist party (CPN-UML) met frequently in Nepal and in India on their own accord to prepare the way for talks that eventually produced the important 12-point Understanding. But in 2004 the time was not yet ripe. The military stalemate was increasingly obvious and mutually hurting – neither side could inflict a decisive military victory on the other – but this was not sufficient to shift the conflict into the political arena. For a conflict to be ‘ripe’ for settlement, in William Zartman’s now classic formulation, the parties also needed to recognize the costs of continued war as prohibitive and discern a way out.<sup>21</sup> Other political scientists of the rationalist school have emphasized that ‘a way out’ have to be associated with gains, whether a joint gain in terms of agreed upon principles for the transition, or a gain by one party relative to the other.<sup>22</sup> Transposed to the Nepal case, it suggested a change in the balance of power or the structure of incentives was required.

### 2.3 2005: The decisive turn towards peace

The decisive factor that gave new momentum to the peace process originated in domestic politics, and – again – in the Palace. On 1 February 2005, the King dissolved the parliament, imprisoned politicians, cracked down on the media, and declared an emergency. The coup signalled ‘a return to the heavily discredited Panchayat system of top-down representation through which the Palace and a small elite had ruled for three decades until 1990,’ as a close observer wrote.<sup>23</sup> As the state became synonymous with the Palace, the common interest of the Maoists and the mainstream political parties – now in opposition to the King and referring to themselves as ‘the agitating parties’ – also became clearer. Both stood to gain from a restructuring of the state, and the discussion of terms started in earnest over the summer. By November 2005 the parties had arrived at the general principles of restructuring, issued in the form of a 12-point Understanding that embraced constituent assembly elections, multiparty democracy and an end to “autocratic monarchy”.<sup>24</sup> The principles expressed the expectation of joint gain in the transition period; in the longer run, each no doubt hoped to gain relative to the other through the political process.

The 12-point Understanding was a roadmap for the further peace process that in retrospect, at least, appears as a ‘critical juncture’ in the sense that it launched future developments onto one out of several plausible paths.<sup>25</sup> It turned out to be a remarkably accurate guide to future events as well. The Understanding proclaimed that ‘implementing the concept of absolute democracy through a forward-looking restructuring of the state has become an inevitable

<sup>21</sup> I. William Zartman, *Ripe for Resolution*. New York: Oxford University Press, 1985/89.

<sup>22</sup> Doyle and Sambanis, *op.cit.*

<sup>23</sup> *Towards a Lasting Peace in Nepal: The Constitutional Issues*. International Crisis Group (hereafter ICG), Asia Report No 99, 15 June 2005, pp. 8-11.

<sup>24</sup> Letter of Understanding. (Unofficial translation). Kathmandu, November 22, 2005. <http://www.kantipuronline.com/kolnews.php?&nid=57858>

<sup>25</sup> See Giovanni Capocchia and R. Daniel Kelemen, “The Study of Critical Junctures Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics*, vol.59 (April 2007), pp. 341–69. The turning point was less obvious at the time, even to some very well-informed observers like the ICG. See *Nepal’s New Alliance: The Mainstream Parties and the Maoists*. Asia Report No 106, 28 November 2005.

need.’ To this end, the parties agreed to end ‘autocratic monarchy’ (without declaring a republic), and to hold elections for a constituent assembly. In a clear sign that significant hurdles remained, disagreement on the procedure for forming an interim government was written into the Understanding. The Seven Party Alliance of mainstream parties wanted a government based on a restoration of the Parliament that the King had dismissed (and where the Maoists, of course, were not represented), while the Maoists wanted a national political conference to establish an interim government. But all agreed that, regardless, the way forward was to create ‘a storm of nationwide democratic movement’, as Point 1 declared. The storm was in fact duly organized – although more by the actions of civil society than the established parties. A few months later, in April 2006, a massive, popular movement of nationwide protests shattered the monarchy and paved the way for the restoration of democratic institutions and the final peace agreement.

The 12-point Understanding committed the Maoists to ‘move along the new peaceful political stream’. Yet they would not surrender their arms in the transition period, and certainly not before the elections. In part, historical precedents of deceit suggested caution. On earlier occasions, the present mainstream political parties had confronted state power but ‘the establishment failed to keep its promises, particularly [by keeping] the convening of a Constituent Assembly pending for over five decades,’ as a sympathetic Indian analyst later noted.<sup>26</sup> Keeping the PLA intact until after the elections had more direct purposes as well. If the Maoist could not achieve revolutionary change through the peace process, they retained a credible option to return to armed conflict. Prachanda discussed the options for restructuring of the army in a frank interview with the Indian newspaper *The Hindu* in early 2006. Ideally, he said, the democratic elements of the Royal Nepal Army would go into a ‘new Nepal army’, to be established on the basis of the ‘verdict of the masses’ as expressed in the Constituent Assembly. If the Assembly decided on a republic, the present leadership of the army would have to go and – by implication – the leaders of the People’s Liberation Army would move in. ‘If a constitutional monarchy wins, then there is the danger that the old generals will remain’, and – by implication – the conflict would continue.<sup>27</sup> Of course, maintaining a rebel army during elections and for an undefined transition period cast doubt on the Maoists’ commitment to ‘move along the new peaceful political stream’. The point was obvious to the party leadership as well, and it was in this context that the UN was most useful: “We want the involvement of the United Nations to create an atmosphere of confidence so that possession of weapons by us does not become a stumbling block in the peace process,” Prachanda told journalists as negotiations on the 12-point Understanding were nearing conclusion.<sup>28</sup>

The formula in the 12-point Understanding placed the army of the people and the army of the King on an equal footing. Both the PLA and the RNA would be ‘under the supervision of the United Nations or any other reliable international supervision’ during the constituent assembly elections to ensure the elections were free and fair and the results accepted.’ (Point 3). The reference to ‘any other’ agent was apparently inserted at the insistence of the Indian government,<sup>29</sup> which had grave reservations about inviting the UN into a peace operation in its immediate neighbourhood. Yet the reference was hardly more than a symbolic assertion of India’s pre-eminence in the subcontinent. Given Nepalese sensitivities about its large and sometimes overbearing neighbour, and the fact that the Indian government had given militarily aid to the Nepal Army during the war, India could not credibly supervise the two armies during an election designed to end the civil war. A neutral third party was called for, and the UN was the self-evident piece in the puzzle. At the time, this was less obvious.

<sup>26</sup> *Frontline*, December 2-25, 2006.

<sup>27</sup> *The Hindu*, February 2006 (see n. 9).

<sup>28</sup> Keshav Pradhan, “A walk on the dark side with Prachanda,” *Times of India*, 13 September 2005.

<sup>29</sup> Whitfield, *op.cit.*

Reading the 12-point Understanding when it was first reported, one close observer later recalled, UN supervision of the PLA ‘felt very far from a done deal!’<sup>30</sup>

It took another year before the peace agreement was finalized. In the meantime, one critical event unfolded as per the sequence anticipated in the 12-point Understanding. The parties had agreed that ‘autocratic monarchy’ must end before the elections to a constituent assembly could be held. The ‘nationwide storm of democratic protest’ to bring this about took place in April 2006, although launched by civil society actors who in effect compelled the political parties to follow. Called *Jana Andolan II*, the popular movement forced the King to restore the Parliament, which formed an interim government and concluded the final peace agreement with the Maoists.<sup>31</sup>

As primarily a roadmap only, the 12-point Understanding left many outstanding issues to be dealt with before the peace agreement could be signed in November 2006, including the role of the parliament, the pre-conditions for the Maoists joining the interim parliament and the interim government, and principles for the management of arms and armies. Further understandings in point form were issued in some areas, but failure to agree on other questions – particularly with respect to integration of armies – produced deliberately vague formulations in the final agreement. Signed in November 2006, the Comprehensive Peace Agreement was generally long on principles but shorter on specifics. It called for a democratically and socially inclusive Nepalese society, affirmed the rights of individuals and groups, and specified in some detail – although not in all areas - the mechanisms regulating the transition to peace and the role of the United Nations in this regard.

### 3. What made the peace agreement possible? A national process in the shadow of India

The decisive momentum towards peace in 2005-6 arose from the changing balance of power among the three poles of Nepalese politics. The King’s autocratic ambitions in an era of democracy, as well as his misrule and arrogance of power, mobilized virtually the entire political spectrum in opposition to the Palace. The mainstream/agitating parties temporarily buried their differences and united in a Seven Party Alliance soon after the King’s February coup. The Maoists repaired splits over strategic directions within the party at the Rolpa plenum in August 2005, firmly coming down in favour of multiparty democracy and thus making the 12-point agreement possible.

Nepal’s vibrant civil society mobilized as well. Both the parties and civil society drew on traditions of political mobilization and agitation that had developed over half a century of political contest and was further refined by the numerous Maoist front organizations established during a decade of revolutionary struggle. Frequent *bandh*(strike) became a staple in the inventory of political agitation. More generally, civil and political groups had been energized by the democratic period in the 1990s, which had underlined the potential, if not the reality, of inclusive and participatory forms of government. Against this ideal, the King’s actions appeared particularly regressive.

In a broader perspective, it is clear that underlying changes in socio-economic structures related to the development process had created conditions for both the war and its resolution

<sup>30</sup> Teresa Whitfield, communication with the author, 28.08.2009

<sup>31</sup> *Jana Andolan I* (the first people’s movement) in 1990 ended the Palace-directed system of representation (*panchayat*), legalized political parties and reintroduced a directly elected parliament.

within the framework of political democracy. Socio-economic transformations over the past half a century had undermined the foundations of the monarchy and Nepal's semi-feudal institutions. These changes had laid the basis for the Maoist challenge as well as the massive demonstration of 'people's power' in the first half of 2006. As sociologist Chaitanya Mishra argues, large-scale migration from the countryside to the urban areas, and to employment abroad, had altered the social landscape.<sup>32</sup> The role of agriculture in the economy had declined, as had the social value of land. Economic growth during the 1990s had produced a measureable reduction in poverty from 42 percent in 1995 to 31 percent in 2003 and improved living conditions for some of the lower castes and other marginalized groups.<sup>33</sup> Literacy rate and health care services had improved markedly for the population as a whole. Economic empowerment and social mobility have historically generated demands for political participation by politically disenfranchised groups and classes; the hundreds of thousands of Nepalese who joined the 'people's movement' in April 2006 to call for peace and democracy - not only in Kathmandu but also in other districts - reflected such structural change. An enthusiastic Indian observer put it this way:

Even more important [than economic growth], after 1990, development spread to the traditionally backward areas outside the Kathmandu Valley, which had hitherto concentrated all power in Nepal. Subaltern ethnic and tribal groups (Janajatis), religious minorities, and women, experienced an improvement in living standards and access to services. All this established the substantive relevance of democracy for the people. It enfranchised and politicised the disadvantaged strata.<sup>34</sup>

The demonstration of people's power was another defining event that brought the peace process forward and enabled the Nepalese to credibly claim national ownership of both the process and its outcome. The *Jana Andolan* was a massive and focused expression of political will, demonstrated above all when the movement defied much of the international community to refuse the King's initial offer of compromise. Hoping to salvage some of his power, the King had on 21 April offered to accept a new nominee for prime minister. India, the US and the EU supported his proposal, but when the people's movement insisted on restoration of the Parliament to underline that the legitimacy of the new government should not derive from the Palace, the King and the internationals backed down.

As the crisis in Nepalese politics came to a head in 2005-06, the footprint of external influences on the diplomacy of peace became more visible. The uncertain and intertwined balance in the triangle of King-Maoists-political parties inflated the value of even small shifts in international support for one or the other party, and, as a close observer noted, made for simple game theoretical calculations.<sup>35</sup> While exploring a rapprochement, the the Maoists and the mainstream political parties also suspected that the other would defect from the bargain and join the King. The King's increasing international isolation decreased his

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<sup>32</sup> "Political Transition in Nepal: Toward an Analytical Framework" in Chaitanya Mishra, *Essays on the Sociology of Nepal*. Kathmandu: Fineprint Books. 2007. Earlier version on <http://www.cmi.no/file/?442>

<sup>33</sup> While inequality increased, the poor experienced a 22% increase in real incomes in the same period. 'That means the bottom 20% not only can afford better food, but also durables such as 'bicycles, radios and mobiles'. Magnus Hatlebakk, *Inclusive Growth in Nepal*, p.1. Based on Nepal Living Standards Surveys. The most disadvantaged were still hill ethnic Tamang, the Rai people of the eastern hills, some hill-Dalits and the Terai (plain) Dalits (ibid).

<http://www.cmi.no/publications/publication/?3068=inclusive-growth-in-nepal>

<sup>34</sup> Praful Bidwai, 'People triumph in Nepal', *Frontline*, Volume 23(9), May 06 - 19, 2006.

<sup>35</sup> As the ICG perceptively noted, '[e]ach force's past conduct and perceived interests will modulate, if not determine, the decisions of the other two. None can act independently, yet none can trust the others fully. Given this balance of domestic forces, external factors assume great importance.' Nepal's New Alliance, *op.cit.* (note 25), p. 2.

attractiveness as a partner, however, and cemented the bargain between the Maoists and the mainstream parties. After the King's February coup his international isolation was nearly complete. The worsening human rights situation prompted the main donors and the UN to issue a joint statement on 18 March, warning that the country was moving towards 'the abyss of a humanitarian crisis'.<sup>36</sup> Major donors, including the Swiss and the Norwegians, reduced or threatened to cut off aid. As over half of the Nepal's national budget depended on foreign aid, this was a serious matter. Even more significantly, the Indian government decided to cut-off military aid. Later aid supplies were non-lethal and only included items that were in the aid pipeline when the cut-off was announced. Even the outspoken American ambassador in Kathmandu cooled his enthusiasm for the King as the last, best bulwark against the Maoists.

As the prospect of an agreement seemed to improve in 2005-06, international efforts to support the process increased. "Governments and international NGOs alike ...sent in an abundance of missions, consultants and advisers who struggled to find a way to make a useful contribution," Teresa Whitfield writes.<sup>37</sup> Donor embassies in Kathmandu sponsored seminars and informal dinners to promote the peace process – soon dubbed 'dinner diplomacy'. A Swiss and a South African 'peace expert' provided technical assistance to the negotiations towards the CPA in 2006.<sup>38</sup> UN officials kept up the encouragement and in mid-2005 the UN Secretary-General sent a high-ranking advisor, Lakhdar Brahimi, to Kathmandu to explore a further UN contribution. The UN also developed fuller communication with all parties to the conflict through its human rights field mission established in early 2005. Not all efforts were equally welcomed by the Nepalese. In particular, after the messy international support for the King's initial bid to pacify the *Jana Andolan* in April 2006, 'the last thing' the Nepalese wanted was 'high level intervention from the outside,' Whitfield concludes.<sup>39</sup>

### 3.1 The determinants of national ownership

The widely accepted view that the 2006 peace agreement was 'nationally owned' reflected the importance of the domestic forces in shaping the conflict and its gradual resolution through the peace process. This influence was partly a function of national conditions and capacities, including established political parties, a vibrant civil society, active media, and a distinct sense of nationalism sharpened by the country's geographic squeeze between two huge neighbours. Recognizing the importance of strategic analysis as part of the struggle, the Maoists appeared particularly adept in dealing with both local adversaries and international friends and foes during the events leading up to the 2006 agreement.

The degree of national ownership of a peace process will also depend on the international environment. Countries of little strategic interests to outside powers can more easily assert national ownership than societies that are caught in the cross-hairs of international competition. One reason for the Nepalese ability to claim a great degree of national ownership over both the war and the peace process was that the country had little strategic interest to outside powers apart from India and China, and it was tacitly accepted by all parties concerned that India here held a preeminent position. The main constraint on Nepalese ownership therefore was Indian influence. This had several implications. India did not wish other external actors to be significantly involved in the peace process, including the UN. While virtually all post-war transitions elsewhere in the world by the early 21<sup>st</sup> century had

<sup>36</sup> Cited in *Nepal: Dealing with a Human Rights Crisis*, ICG, Asia Report No 94, 24 March 2005, p. 1.

<sup>37</sup> Whitfield, *op.cit.* p. 26.

<sup>38</sup> The Swiss participant, Gunther Baechler, describes the process in *Nepal : Switzerland's contribution. Adapt facilitation to changing context. Role of the external actors, lessons learnt and outlook*. Bern: Federal Departement of Foreign Affairs FDFA, 2008. <http://katalog.alliancesud.ch/German/>

<sup>39</sup> Whitfield, *loc.cit.*



been brought within the purview of the expanding UN peacebuilding regime, sometimes in ways that undermined national ownership, this did not occur in Nepal. Instead, India was the principal external influence that constrained Nepalese ownership of the peace process.

### 3.2 India-Nepal relations

As neighbouring countries that are mutually dependent despite their hugely unequal power, India and Nepal have an intrinsically complicated relationship. Although the Maoist People's War and the subsequent peace process created new challenges in the relationship, the Indians and the Nepalese responded in ways that were familiar from earlier periods of tension.

Indian policies towards Nepal are rooted in the country's large power status and the ambitions of all post-independence governments to play a leading, and arguably hegemonic, role in the subcontinent. For India, security interests relative to China have traditionally been paramount, but there are also immediate border security issues, concern over Maoist links with revolutionary Naxalite movements in several Indian states, and fear that Pakistan-supported militant groups may use Nepalese territory for anti-Indian purposes. Movement across the long, open border between the two countries is impossible to control, although to some extent can be regulated. India also has a range of economic and social interests in Nepal, from development of hydropower to welfare payments for Gurkhas who served in the Indian army. India's dominant role is embodied in the 1950 Treaty of Peace and Friendship between the two countries. In military matters the treaty is clearly unequal. Reflecting Indian fears of Chinese southward expansion, the original treaty (later modified) gave India formal oversight over Nepal's military relations and right to intervene militarily to meet external security threats. In economic matters the treaty is formally equal, but reciprocity between two highly unequal economies has rebounded in Nepal's disfavour, as most Nepalese see it, by privileging Indian capital and manpower in Nepal.

India has historically used a range of political tactics to promote its interest in Nepal: openly coercive measures such as the economic blockade in 1989-90 have been relatively rare. Support for one Nepalese political faction against another in a manner that Nepalese usually identify as a divide-and-rule strategy has been a fairly consistent feature since Indian independence.<sup>40</sup> In 1950 and 1951 Delhi supported the King and the Nepali Congress against the Rana-establishment that for generations had usurped power from the King. In the 1960s, official India supported the political parties against the (next) King Mahendra. In the 1970s, support switched to the (next) King Birendra and the Nepali Congress against the Communist party.<sup>41</sup>

India also has a more direct leverage through the traditionally close relationship between the armies of the two countries. The original and most onerous clauses of the 1950 treaty that permitted Indian control over the Nepal Army were modified in the 1960s (mostly due to the efforts of the King Mahendra, whom the Indians then tried to undermine), but Delhi still wants India to be the primary source of military assistance to Nepal, in particular to the exclusion of Pakistan and China. When the Nepal Army retooled to deal with the Maoist insurgency, India was its main partner. The close relationship between the two armies is expressed in honorary joint appointments: the chief of the Indian army is honorary general in the Nepal Army and vice versa. The inter-army relationship gives India significant influence on matters of both war and peace, as exemplified during the political demise of the Nepalese

<sup>40</sup> Rabindra Mishra, "India's Role in Nepal's Maoist Insurgency," *Asian Survey*, vol. 44(5), September-October 2004, pp. 627-646. For a Nepali nationalist perspective on Indian strategies, see.g. Saubhagya Shah, "A Himalayan Red Herring?" in Hunt, *op.cit.*

<sup>41</sup> S.D. Muni, *India and Nepal*, Delhi: Konark, 1995.

monarch in 2005-06 when Indian termination of military aid made it clear that Delhi was ready to jettison the King if he became overtly nationalistic.

Yet even highly unequal relationships confer some power on the weaker party. India's many interests in Nepal benefit from having good relations with Kathmandu, and Delhi recognizes Nepalese sensitivities and fears of being 'swallowed' by their large neighbour (as to various degrees Sikkim and Bhutan have been). Nepalese willingness to 'play the China card' - as several Nepalese leaders in fact have done - is a potential constraining factor on Indian heavy-handedness.<sup>42</sup> In matters of development assistance, moreover, the Nepalese government has numerous other partners. During the Maoist insurgency, the government concluded military assistance agreements with the UK and the US and received non-lethal military equipment from China as well. Within India, political differences at the Centre and considerable policy autonomy on the state level further makes it difficult to harness the country's vast power differential vis-à-vis Nepal into a precise policy instrument.

These contextual and historical factors shaped India-Nepal relations during the insurgency and the peace process. In deference to Nepalese sensitivities, Indian power was rarely displayed openly and at times appeared incoherent, yet it lay as a constant shadow over Nepalese politics - a constitutive power that set boundaries and constrained choices.

The Indian government viewed the Maoist insurgency as a national security issue for two reasons. First, it was feared that the Nepalese Maoists might inspire or support similar movements in India. At the time, the ideologically related Naxalite rebels in northeast India posed a significant challenge, ranking just behind militant Muslim groups and the Jammu and Kashmir conflict as an internal security threat.<sup>43</sup> Second, the China factor was kept alive by memories of Chinese expansion into Tibet, the 1962 war between India and China, and continuous rivalry between two large powers. Although the Chinese government had markedly distanced itself from the Nepalese Maoists, Delhi found its national security interests best served by what became known as 'the two-pillar policy' of support for Nepal's monarchy and multiparty democracy. Hindu fundamentalist parties in India, especially the BJP which led the government until the 2004 elections, were ideologically committed to the Nepalese King as the last ruling Hindu monarch in the world. Delhi therefore steadily supported the King, his army and the mainstream political parties, yet - perhaps in the logic of divide-and-rule - almost all top-level Maoist leaders enjoyed de facto sanctuary in India.

By mid-2004, there were signs of a change. The Prime Minister of the new Congress-led coalition government, Manmohan Singh - known for his reasoned and measured political approach - encouraged Indian intermediaries to establish back-channel contacts with the Maoists to see if the rebels could be tamed through negotiations rather than defeated in battle.<sup>44</sup> The back-channel initiative laid the foundation for a significant Indian role in facilitating negotiations the following year when the King's coup in February 2005 caused a serious crack in the two-pillar policy. The Indian External Affairs' Minister, Natwar Singh, openly chided the King: "This can only benefit the forces that not only wish to undermine democracy in Nepal but the institution of democracy as well".<sup>45</sup> *The Times of India*, known to be close to the government, referred to the Nepal Army as 'a ragtag army' and, in the same breath, called King Gyanendra the king of a 'failing state'.<sup>46</sup> Evidently, it was time for the

<sup>42</sup> King Mahendra's decision to build a road from Kathmandu to the Tibetan/Chinese border was an early and blatant demonstration of this tactic.

<sup>43</sup> Rita Manchanda, "Nepal at a Crossroads," *Frontline*, vol. 21 (19), September 11-24, 2004.

<sup>44</sup> Using the Indian scholar S.D. Muni as an intermediary. Whitfield, *op.cit.*

<sup>45</sup> Statement to the Indian parliament, 4 March 2005, cited in ICG, March 2005, *op.cit.*, p.1.

<sup>46</sup> *Times of India*, 13 July 2005. Three months earlier, however, the paper had noted that the military establishment was worried about China, and it was much too early to drop the King.

Indian government to spread the risk by encouraging negotiations with the Maoists, as Manmohan Singh earlier had explored, or even align itself with the forces of democracy and social progress in Nepal, as some Indian analysts argued.<sup>47</sup> Delhi now switched to support the mainstream parties and the Maoists against the King, although privileging the relationship with one party (the Nepali Congress), while the Indian security establishment and the Hindu fundamentalist parties continued to stand by the army and the King.

The change in Delhi's policy was a significant encouragement for the Maoists and the mainstream parties to negotiate the 12-point roadmap. The key talks even took place in Delhi, and the Maoist leader, Prachanda and the Nepali Congress leader and ex-Prime Minister G.P. Koirala met in the Indian capital in July 2005. However, the Indian government did not openly host the talks, and the extent of direct Indian facilitation is unclear. The Indian government placed a near black-out on news of the talks, and later investigations by two analysts failed to uncover significant information.<sup>48</sup> Delhi's discretion reflected Nepalese sensitivities; an overt Indian hand would have undermined the legitimacy of the agreement, which was announced in Kathmandu. Even so, there was some nationalist sniping in Kathmandu to the effect that the 12-point Understanding was 'made in India'.

The relationship was tested at later points in the peace process, but India basically recognized that the monarchy was a spent force. The Nepalese people's movement in April 2006 defied Indian attempts to secure acceptance for an interim government appointed by the King (rather than the parliament he had dismissed). Importantly, the massive demonstrations in Kathmandu that month proceeded without interference from the Nepalese Army and, implicitly, the Indian government. The troops were deployed in the background and did not disband or stop the demonstrators. Among the many restraints acting on the troops at that time – the power of the people, the increasing illegitimacy of the King, the hopes attached to the peace process, and the near-united international presence - was also the realization in Delhi that it was too late to save the King.

Recognizing the strategic importance of the shifts in India's policy, the Maoists had early started to cultivate Indian support despite their ideological stance that identified India as the principal imperialist and neo-colonial enemy. The Maoist struggle for social and economic justice was also presented as a nationalist struggle against India - India as the architect of unequal treaties, as the main supporter of Nepal's feudal and monarchical institutions, and as the main source of the capital and entrepreneurs that fuelled Nepal's capitalism. Whether a genuine fear or a ploy, Prachanda had called on the revolutionary forces to prepare for an Indian military intervention and ordered cadres to dig tunnels for defence. But, as Prachanda said, 'ours is not a dogmatic party',<sup>49</sup> and this was clearly a time for adjustment. In two wide-ranging interviews with Indian journalists, in September 2005 and February 2006, Prachanda noted that the Maoists 'only' asked for India not to arm the King's army, to support the democratic forces in Nepal, and to release Maoists leaders still languishing in Indian jails.<sup>50</sup> In return, he emphasized that the Maoists were not attempting to export revolution to India. 'People's war is not a commodity for export.' There was no 'compact revolutionary zone' stretching from Nepal into Naxalite territory in India. On the contrary, he said, by demonstrating their willingness to negotiate, the Nepalese Maoists could serve as a model for

<sup>47</sup> E.g. the frequent and generally sympathetic reports by Rita Manchanda in *Frontline* magazine of the liberal *The Hindu*. See also Praful Bidwai, "People Triumph in Nepal," *Frontline*, 23(09), May 6-19, 2006. The noted Indian scholar of Nepali affairs, S.D. Muni, concluded that continued Indian support for the King after Gyanendra's February 2005 coup was "untenable" ("Neighbourly Concerns", seminar paper. [www.india-seminar.com/2005/548/548%20s%20d%20muni.htm](http://www.india-seminar.com/2005/548/548%20s%20d%20muni.htm)) and later called for acceptance of the Maoist government ("Dealing with a new Nepal," *The Hindu* 15, Septem ber 2008).

<sup>48</sup> Whitfield, *op.cit.*, and ICG, November 2005 report, *op.cit.*, pp. 16-17.

<sup>49</sup> *Times of India*, September 13, 2005

<sup>50</sup> *Times of India*, 13 September 2005, *The Hindu* February 2006 (see note 9).

the Indian Naxalites to join ‘the new peaceful political stream’. While there was still a need to negotiate ‘fresh and equal’ treaties with India, Prachanda mentioned this only in passing.

Prachanda also took pains to assuage Indian concerns regarding the role of outside actors in general, not only with regard to China,<sup>51</sup> but also in the peace negotiations that were nearing a final agreement. Earlier references to the UN by the Maoists had been a sore point in Delhi, as we shall see, but now Prachanda emphasized that the reference to UN supervision in the 12-point Understanding did not mean foreign peacekeepers, only ‘non-armed supervision’.

## 4. The UN role: defining a minimalist mission

The UN mandate to assist Nepal’s transition from war to peace was negotiated with the Nepalese parties during the fall of 2006.<sup>52</sup> As subsequently approved by the Security Council (Res. 1740/2007), the UN had four main functions in relation to the implementation of the peace agreement:

First, the UN was asked to verify and monitor cantonment of both the Maoist and the Nepal Army and their arms. The peace agreement is quite specific on cantonment details and technicalities of monitoring; these were further elaborated in a separate technical agreement on monitoring and management (the AMMAA), signed a week later. The main principles for supervision are set out in the preamble of the AMAA:

The parties agree to seek UN assistance in monitoring the management of the arms and armies of both sides by the deployment of qualified UN civilian personnel to monitor, according to international norms, the confinement of Maoist army combatants and their weapons within designated cantonment areas and monitor the Nepal Army (NA) to ensure that it remains in its barracks and its weapons are not used against any side.<sup>53</sup>

Neither the CPA nor the technical agreement specifies the period of UN supervision of arms and armies.<sup>54</sup> The peace agreement operates with two benchmark events – elections to a constituent assembly and ‘the democratic restructuring of the army’ – but these are only mentioned in a general sense to introduce and justify the provisions for international monitoring. The technical agreement makes reference to a set of much broader benchmarks – including ‘democratic restructuring of the state, and social-economic-cultural transformation’ – but does not tie the duration of UN arms monitoring to these or any other event. It was assumed, and non-controversial, that UN presence would cover the election period; this had all along been the principal reason cited by the Nepalese parties and the UN Secretary-

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<sup>51</sup> In the *Times of India* interview, Prachanda welcomed the Indian Foreign Secretary’s recent visit to Beijing and the prospect of a Sino-Indian agreement on Nepal – implying that the Maoists would be happy to relinquish the opportunity to play ‘the China card’.

<sup>52</sup> The initial negotiations took place in August-September 2006 with reference to two identically worded letters requesting assistance sent to the UN Secretary-General by the Nepali Congress leader and then Prime Minister, G.P.Koirala and Prachanda in August. The terms were further developed with reference to the Comprehensive Peace Agreement (CPA) signed in November that year and the related Agreement on Monitoring of the Management of Arms and Armies (AMMAA).<sup>52</sup>

<sup>53</sup> *Agreement on Monitoring of the Management of Arms and Armies 28 November 2006*, preamble.

<sup>54</sup> An outside consultant identified this as a weakness. Major General (Ret.) Michael Smith, *Unfinished Business: Preliminary Lessons from United Nations Arms Monitoring in Nepal*, 27 June 2008 (CPPF, Social Science Research Council), p. 11.

General for inviting the UN.<sup>55</sup> The open-ended nature of the UN monitoring presence, however, compounded the delicate negotiations that took place when the mission's mandate was periodically renewed.

The second core function of the UN mission was to monitor and assist the forthcoming elections. Constituent assembly elections had been a critical element in the negotiations and formed the principal bridge to competitive but peaceful, multiparty politics. The Nepalese parties had originally requested the UN to 'observe' the elections, but as the UN itself does not do large-scale election observation, its role was defined in terms of technical assistance to the elections and a monitoring role organized around a small, independent Electoral Assistance Office. In the UN perspective, the organization's major role in contributing to optimal conditions during the elections would be to maximize UN presence in the districts. This was done through the posting of UN civil affairs officers and electoral advisers to the districts, as well as through the presence of human rights officers from UNOHCHR, and encouragement of external election observers from appropriate NGOs. This rationale led to a far-flung and visible UN presence throughout Nepal in preparation for the elections. At its height, the civilian UNMIN component alone totaled almost 700 civilians, half of whom were internationals. Election assistance was a staple of international peace missions and in the Nepal case played an important role in the transition from war to peace. Yet the UN's high visibility also had a cost, as we shall see below, in terms of negative Nepalese reaction to the 'white vehicles' syndrome.

A third function for UNMIN approved by the Security Council was to assist in the monitoring of the ceasefire agreement. This was the primary basis for justifying the civil affairs component of the mission.

The peace agreement has another reference to the UN, namely the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR is requested to maintain the field mission it established in Nepal in 2005 and to monitor the sweeping human rights provisions of the peace agreement. The initial decision to establish the field mission had been highly controversial, but once in operation the mission rapidly demonstrated its value. Its continued presence in the pecebuilding phase was readily affirmed, although organizationally it remained a separate entity when UNMIN was established.

In sum, the operation approved by the Security Council on January 23, 2007 was a 'focused mission of limited duration', as it came to be called. Unlike most contemporary UN peace missions, there were no armed peacekeepers. UNMIN personnel observing the cease fire and the two armies were to be unarmed and civilian (at least in appearance).. There were no provisions for humanitarian assistance and reconstruction, and none for broader peacebuilding functions in the legal, political and social field.

The mandate was even narrower than what the UN Secretariat had proposed in its reports to the Security Council. Based on UN assessment missions in the fall of 2006 and the advice of the newly appointed Personal Representative of the Secretary-General (PRSG) to Nepal, Ian Martin, the Secretary-General had outlined a somewhat broader role. It was envisaged the

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<sup>55</sup> The 'United Nations has been requested to monitor the arrangements relevant to the management of arms and armed personnel.... Assistance is being sought in a variety of areas in the peace process with a view to creating an atmosphere conducive to free and fair elections for the Constituent Assembly.' *Letter dated 22 November 2006 from the Secretary-General to the President of the Security Council. S/2006/920, 27 November 2006, p.1.* The letters from G.P. Koirala and Prachanda are appended to the document. The 8-point agreement between the Maoists and the government of 16 June 2006 specifically refers to UN supervision of the two armies before and during the constituent assembly elections.

mission would be ‘providing good offices to the Nepalese parties and authorities at all levels’.<sup>56</sup> Furthermore, ‘[i]n support of the mission’s good offices and political functions, the unit will have adequate capacity to monitor, analyse and report on political, civil, social and economic and other relevant issues.’<sup>57</sup> The term ‘good offices’ did not make it into the authorizing resolution for UNMIN. Although this function arguably was inherent in any UN peace operation, as Martin indeed maintained, he later sought to develop the formal basis for a more active role in this regard and regretted that mandate did not explicitly permit UNMIN to provide ‘broader support’ to the peace process.<sup>58</sup> The Secretariat in its original report had also suggested a general peacebuilding role that included support to local governance structures, conflict resolution on the local and national level, and posting of ‘social exclusion advisers’ to the countryside to promote the rights of women, children and traditionally marginalized groups.<sup>59</sup> This was pared down to a standard one-liner item in the introduction to the mandate approved by the Security Council: “*Recognizing* the need to pay special attention to the needs of women, children and traditionally marginalized groups in the peace process, as mentioned in the Comprehensive Peace Agreement” etc. The discrepancy reflected in part the different nature of the two documents. A background report recommending a mission is typically a fuller document than the mandate as formulated in a Security Council resolution. When established, UNMIN did include thematic advisors on gender, child protection and social inclusion, as well as a sizable number of civil affairs officers who looked after ‘critical peace process issues’ as well as the election.<sup>60</sup> But the mission as a whole started to downsize soon after the 2008 elections and by early 2009, only two years after it was established, UNMIN had been sharply reduced in both size and formal status.<sup>61</sup>

#### 4.1 The rationale for ‘a focused mission of limited duration’

As none of the major actors wanted more than a minimalist mission, the UN Secretariat never considered a full-fledged, multidimensional operation. The rationale for a more minimalist operation was persuasive. The Nepalese had painstakingly negotiated for more than 3 years to reach an agreement. Although some political factions in the Terai later complained that they were not included, at the time the agreement involved the main parties to the civil war and had the support of all the organized political actors - the main political parties, civil society organizations, neighboring states and the main donors. The armed forces on both sides were for the most part disciplined and well-established, not ‘rag-tag armies’ of warlords or militias with diffuse leadership structures. Nepal was not a failed state in the usual meaning of the

<sup>56</sup> Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process. S/2007/7, January 9, 2007, para. 47.

<sup>57</sup> Ibid. para. 53.

<sup>58</sup> In his last briefing to the Security Council in early 2009, Ian Martin said his one particular regret was that UN offers to provide broader support to the peace process were not accepted. Briefing, 16 January 2009, [www.unmin.org.ne](http://www.unmin.org.ne)

<sup>59</sup> [T]he mission will have a civil affairs component including officers deployed to the regions....

The civil affairs officers will seek to promote the strengthening of the democratic functioning of local governance structures and the freedom of all political parties to operate normally throughout the country, working closely with local government and civil society to develop and promote conflict mitigation and dispute resolution strategies at the local level. Gender, child protection and social exclusion advisers will ensure that the work of the civil affairs officers, as well as of the monitors of management of arms and armies and of the electoral staff, maximize the inclusion of women and traditionally marginalized groups.’ S/2007/7, para.46.

<sup>60</sup> Report of the Secretary-General on the request of Nepal for United Nations Assistance in support of its peace process. S/2007/612, 18 October 2007, p. 9

<sup>61</sup> The mission head was no longer a Special Representative of the Secretary-General, but had the lower rank of a Representative of the Secretary-General.

word.<sup>62</sup> On the contrary, the country had at least until the war had state administration that functioning relatively well despite its politically and socially exclusive nature. Years of dealing with donors had created national procedures and international confidence in the capacity of the state to handle funds for reconstruction. It was symptomatic that the multi-donor trust fund established for post-war reconstruction in 2007 was administered by the Nepalese government and not an international financial institution on behalf of the donors, as was the norm in genuinely failed states such as Afghanistan. The issue in Nepal was less the lack of a state apparatus than who should control the state.

As for reconstruction, the 10-year civil war had directly or indirectly touched the lives of most of the 28 million Nepalese. Some 15 000 had been killed or made to disappear, and many more thousands had been forced to leave their homes.<sup>63</sup> Yet not all regions of the country had been affected, and certainly not all in equal measure, and the economy as a whole had continued to grow during the ten-year war.<sup>64</sup> Comparatively speaking, this was a ‘small war’ alongside other conflicts where the UN was or had been involved, such as Afghanistan, Congo, and the former Yugoslavia. Moreover, several foreign donors had long been active in Nepal, and most had maintained their activities, if abridged, during the war. The UN programs and specialized agencies were there as well. In short, the machinery and funding circuits for reconstruction were already in place.

This augured well for the implementation of the peace agreement with even a minimalist UN mission. None of the main Nepalese parties to the conflict seemed seem to want a fuller presence, although the Maoists were more welcoming towards the UN than the mainstream parties, both during the peace negotiations and in the peace implementation phase.

## 4.2 The Nepalese parties

For the Maoists, the UN represented above all a potential source of international recognition and support. All rebels start the battle of international legitimacy with a huge handicap in relation to the government. As custodian of the nation’s sovereignty, the government is entitled to a place in the dense international web of communication, assistance and diplomacy

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<sup>62</sup> The ‘failed states’ literature is vast. A first generation of important but now rarely cited works are William Zartman, (ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Boulder; Lynne Rienner, 1995; Joel S. Migdal, J.S., *Strong Societies and Weak States. State Relations and State Capabilities in the Third World*, Princeton, Princeton University Press, 1988. For ‘failed states’ in relation to terrorism, see Gurr, T.R., et al., *State Failure Task Force Report: Phase III Findings*, September 30, 2000 (anticipating some of the post 9/11 perspectives), and Robert I. Rotberg, R.I., *Failed States in a World of Terror*, in: *Foreign Affairs*, vol. 81 n° 4, 2002, pp. 127-140. Basic concepts are sorted out in Jennifer Milliken (ed.), *State failure, collapse and reconstruction*. Malden, Mass.: Blackwell Publ 2003. (Book Version of a special issue of *Development and Change*, vol.33(5),2002, ed. with K. Krause). A useful overview of the aid-related literature, including OECD/DAC efforts to harmonize aid towards fragile/failed states, is Torunn Wimpelmann, *The Aid Agencies and the Fragile States Agenda*, Working Paper no 21, 2006, Bergen: Chr. Michelsen Institute <http://www.cmi.no/publications/publication/?2542=the-aid-agencies-and-the-fragile-states-agenda> .A good overview of the literature on ‘failed states’ in Africa is Timothy Raeymaekers *Collapse or Order? Questioning State Collapse in Africa*, Working Paper N° 1 May 2005, University of Gent, Conflict Research Group, <http://www.psw.ugent.be/crg/publications/working%20paper/QuestioningStateCollapse.pdf>. Two recent publications suggest the span in the literature: Robert Bates, *When Things Fall Apart: State Failure in Late-Century Africa*, Cambridge: Cambridge University Press 2008 (analysis anchored in rationalist theory), and Ashraf Ghani, Clare Lockhart, *Fixing failed states : a framework for rebuilding a fractured world*. Oxford : Oxford University Press, 2008 (a how-to guide for fixers of failed states).

<sup>63</sup> Human Rights Watch, *Waiting for Justice. Unpunished Crimes from Nepal’s Armed Conflict*, September 2008, citing the Nepali human rights organization INSEC say 13 256 persons were killed, and close to 2000 “disappeared”, mostly at the hands of the army and armed police. [http://www.hrw.org/sites/default/files/reports/nepal0908web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/nepal0908web_0.pdf)

<sup>64</sup> Hatlebakk, *op.cit.*



as well as the measure of international legitimacy that recognition confers.<sup>65</sup> Rebels, by comparison, must actively seek out international patrons. During the Cold War, state patrons were readily available to rebels on the ideological left and right, but after 1989 such patronage dried up, particularly for a fledgling Maoist movement. China, for one, kept to a strictly correct line of maintaining relations with the Nepalese government, not the rebels, and seemed somewhat embarrassed that Chairman Mao's name was appropriated by the Nepalese insurgents.

As noted above, the only international support network of the Nepalese Maoists was a smattering of militant leftist movements, mainly in India (Naxalite groups and various 'national liberation fronts' in India's northeast).<sup>66</sup> Outside the subcontinent, they had ties with radical splinter groups in South Asia, Latin America and Middle East, and some groups in Europe and the United States whose names ('revolutionary communist') indicated their marginal status in this part of the world. Some of the movements were joined in umbrella organizations, of which the two main ones were RIM (Revolutionary Internationalist Movements) and CCOMPOSA (Coordinating Committee of the Maoist Parties and Organizations in South Asia). As struggling splinter movements, the most these organizations could offer was solidarity and the lessons learnt from their own experience.<sup>67</sup> More tangible support in the form of donations/taxes was collected from individuals and businesses within the country and from among the many Nepalese working abroad. Yet it could not make up for the movement's international isolation. The point was brought home when the Deuba government in late 2001 declared an emergency and listed the leaders as fugitive criminals under Interpol. Later on, even exile in India became uncertain when Indian police in 2003-4 arrested several high-ranking Maoist cadres.

Making a virtue of necessity, Prachanda stressed the importance of self-reliance. The Maoists nevertheless recognized the importance of international publicity to the People's War. For example, they invited a British journalist to witness the establishment of the first 'people's government' in the central region close to Kathmandu and were rewarded with a full-feature friendly report in the Sunday edition of the *Independent*. Importantly, the Nepalese press made much of the fact that the international press had been present, seeing it as a propaganda victory for the Maoists.<sup>68</sup> During the negotiating phases of the conflict, the party leadership made a point of presenting their positions to the diplomatic missions in Kathmandu<sup>69</sup>

The Maoist decision to welcome the UN into the peace process must be seen in this light. It helped in some ways to correct the initial imbalance between government and rebels. By its very act of dealing with the insurgents, the UN conferred a measure of status and reduced their isolation. The UN was also useful to the Maoists as a witness in the negotiations, a political guarantee of security when they moved into the open, and a friendly broker when the peace agreement was signed but implementation faltered.

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<sup>65</sup> Doctrines of diplomatic recognition in international law differ. The pragmatic tradition denies that diplomatic recognition confers (political) legitimacy.

<sup>66</sup> [www.cpnm.org](http://www.cpnm.org) and *Nepal's Maoists: Purists or Pragmatists?* ICG, Asia Report N°132, 18 May 2007.

<sup>67</sup> From the RIM Committee, the party shared the distilled experiences of revolutionary communist movements in Peru, Turkey, Iran and the Philippines. It was rumoured that Pakistan intelligence agency ISI had approached the Maoists with offers of assistance, but the Maoists recognized the danger this posed to their delicate relationship with India, and Prachanda firmly denied the rumours. Anirban Roy, *op.cit.* 96.

<sup>68</sup> Sarah Shneiderman and Mark Turin, "The Path to 'Janasarkar': An Anecdotal Account of the Maoist Movement in Dolakha District", in Hunt, *op.cit.* . 80.

<sup>69</sup> For instance, when the 2001 talks broke down the party sent a letter to foreign embassies in Kathmandu which placed the blame on the unwillingness of the government to accept a constitutional assembly. When the Maoists came to Kathmandu for the 2003 talks, they made a point of keeping in touch with the diplomatic community.



Nevertheless, the Maoists did not rush to invite in the UN. Their appreciation of the potential value of the UN developed over time and always recognised its limits. The idea of UN assistance to mediate an end to the civil war did not originate in Nepal, but in the UN Secretariat, apparently with the aid of a high-ranking official in UNICEF who himself was Nepalese.<sup>70</sup> The four-line offer to mediate (provide ‘good offices’, in UN language) was initially buried in the annual report of the Secretary-General’s to the General Assembly on the work of the organization in August 2002.<sup>71</sup> The offer went unnoticed until picked up by the Indian and Nepalese press in connection with the marking of the UN Day on 24 October the same year. This might have sparked the interests of the Maoist leadership, as one recent study claims,<sup>72</sup> but, if so, they did not let it be known. Not until February 2004 – more than a year and half later – did Prachanda respond positively. Acknowledging offers from the UN and the EU to help move the peace process forward, he said the Maoists ‘would accept mediation and observation from the UN towards creating an environment for solving the conflict peacefully.’<sup>73</sup> The response opened for a renewed offer from the Secretary-General in March 2004, and now Prachanda accepted. By this time, as we have seen, the military stalemate between the PLA and the RNA was starting to hurt, and Maoists were again considering talks.

As the peace process moved forward, the most direct value of the UN for the Maoists was to monitor the two armies during the transition period. As we have seen, this enabled the Maoists to postpone demobilization until after the constituent assembly elections. In a more general sense, UN commitment to help implement the peace agreement also gave a UN imprimatur to its key principles for which the Maoists had fought – an elected constituent assembly, restructuring of the state, social inclusion, the end of ‘autocratic monarchy’ and on the horizon, a republic. When implementation stalled in 2007, the UN presence represented a measure of physical protection, Maoist leaders repeatedly told senior UNMIN officials.<sup>74</sup> The Maoists were now moving openly throughout the country to prepare for elections, but the PLA was cantoned. The much larger Nepal Army was also confined to its barracks and monitored by the UN, but there were no restrictions on the armed police or the police. The UN had neither the capacity nor the mandate to do more than draw a political line in the sand, yet the Maoists evidently appreciated its protection value.

The UN presence and its human rights field mission arguably helped to inhibit some forms of violence by the ex-belligerents, yet it did not prevent the low-level violence that developed soon after the CPA was signed and led to a condition of lawlessness in parts of the country, especially the Terai. Operating mostly outside the Terai, the Maoist Young Communist League soon became notorious for kidnapping, beating and otherwise intimidating political opponents. Most egregiously, higher-level Maoist cadres kidnapped a prominent businessman who subsequently was tortured and killed in a PLA cantonment site included in the UN monitoring scheme. The incident took place in May 2008, just after the Constituent Assembly elections that gave the Maoists a resounding victory. The murder of Hari Ram Shrestha became a cause celebre for the mainstream parties, now in opposition, who charged the UN of colluding with the Maoists. UNMIN must go!” declared one paper, in language only slightly more brash than that in the mainstream media. The failure of the UN to stop the murder, the editorial continued, “gives credence to the general presumption in Nepal that the

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<sup>70</sup> Kul Chandra Gautam.

<sup>71</sup>The operative paragraph read: “In Nepal, however, I am increasingly concerned by the escalation of violence between the Government and the armed insurgency. If requested, I would positively consider the use of my good offices to help achieve a peaceful solution.” *Report of the Secretary-General on the work of the Organization. Supplement No. 1.A/57/1*, August 28, 2002, pra 25.

<sup>72</sup> Whitfield, *op.cit.* p.13.

<sup>73</sup> *Kathmandu Post*, 5 February 2004.

<sup>74</sup> Interviews with present and former, UMIN officials, October and December 2008.

UNMIN officials are friendly towards the Maoists and that the authorities there only pocket money for their non-performances and high negligence as well.”<sup>75</sup>

In fact, the mainstream parties needed the UN as much as the Maoists in order to conclude the deal on elections and monitoring of the two armies that was necessary to secure a peace agreement. Yet the largest of them, the leader of the Seven Party Alliance and the main negotiating partner, the Nepali Congress, on occasion openly questioned impartiality and value of the UN. Underlying the reservation and at times outright hostility was resentment that the UN involvement in the peace procession necessarily had conferred some status on the Maoists as an equal and legitimate political partner. Even a simple act of representation, such as the presence of a high-ranking UN official at a celebration parade by the PLA, underlined that the Maoist army now was a legitimate body and provoked protests from the Nepali Congress.<sup>76</sup> When the Maoists unexpectedly won the Constituent Assembly elections in April 2008, the mainstream parties, particularly the Nepali Congress, vented their anger at the UN. The Nepali Congress had signed the peace agreement on behalf of the Seven Party Alliance in the firm expectation that they would win the elections, and for that reason had welcomed the UN to monitor the results. On the eve of the elections the mainstream parties had confidently circulated estimates predicting that the Maoists would get only 10-15 % of the vote (they got 29% and ended up as the largest single party in the Assembly with 38% of the seats).<sup>77</sup> The crushing loss made the mainstream parties seize on matters small and large, including the alleged unauthorized movement of Maoist cadres and arms during the elections and the murder of Ram Hari Shrestha, to criticize the UN. The Nepali Congress, the only, large mainstream parties to choose opposition rather than joining the Maoist-led coalition after the elections, was particularly testy. Hints that the UN might assist with the difficult issue of demobilization and integration of the two armies was met with icy rejection, both in public and apparently in intra-party discussion as well.<sup>78</sup> NC leader G.P. Koirala even expressed his anger at the UN in undiplomatic terms to the UN Secretary-General when he visited Kathmandu in November 2008.<sup>79</sup>

National actors commonly assess the value of the UN in a strategic calculus determined by their policy objectives, but this tendency seemed particularly pronounced in the Nepal case, perhaps because of the sense that the war as well as the peace process was primarily of their own doing. All political parties tried to manipulate the UN presence in their own favour or circumventing it when inconvenient. Thus, the Maoists – although basically more appreciative than the Nepali Congress of the UN– played the numbers game in the UN-supervised registration of arms and combatants. They also tried to use the registration process as a bargaining leverage on the broader issue of integration of Maoist cadres in the Nepal Army. The Nepali Congress had shown a partisan interpretation of the UN’s role from the moment when the UN mission to Nepal was being planned. The then Prime Minister G.P. Koirala had sent a letter to the UN Secretary-General in mid-2006 asking for a UN mission to

<sup>75</sup>*The Telegraph Nepal*, 23 May 2008. [http://www.telegraphnepal.com/news\\_det.php?news\\_id=3466&PHPSESSID=d92eab2de286e52a10b43510f76751ed](http://www.telegraphnepal.com/news_det.php?news_id=3466&PHPSESSID=d92eab2de286e52a10b43510f76751ed)

<sup>76</sup>The problem arose when the head of the UN monitoring mission, General Jan Erik Wilhelmsen attended an anniversary parade of the PLA in November 2007. The head of UNMIN and other UN civilian officials declined the invitation. Government officials boycotted the ceremony. The nomenclature might have been important here. In the peace agreement, the Maoist soliders are referred to as ‘Maoist combatants’ or ‘the Maoist Army’, never the People’s Liberation Army.

<sup>77</sup> Interviews with Nepali Congress member, Kathmandu, December 2008.

<sup>78</sup> Interviews with Nepali Congress member, Kathmandu, December 2008.

<sup>79</sup>The meeting between Ban Ki-Moon and G.P. Koirala was widely reported in the Nepali press as embarrassing. Koirala seized on an incident where a Maoist member of the Constituent Assembly had taken his weapon along to an assembly meeting. As PLA weapons had been registered by the UN in the cantonments, Koirala suggested that the UN was responsible for the transgression.

decommission the Maoist army.<sup>80</sup> The request had not been discussed with the Maoists and was contrary to the basic understanding of the peace talks nearing completion at the time. The request contravened the requirement of neutrality attached to a UN peace mission, and on which its legitimacy and presumably also influence rest. The Maoists naturally protested, and UN officials secured two identical letters from Prachanda and Koirala that omitted the offending sentence and requested UN assistance on correctly neutral terms.

The instrumentalist views of the UN were mirrored in Indian policy as well.

### 4.3 The Indian factor

India's opposition to a strong UN presence in the Nepal peace process was a principal reason why UNMIN was designed as a minimalist mission. To some, it was surprising that India accepted such a mission at all. The explanation lies in the successful establishment of a prior UN mission in Nepal – the human rights field mission introduced in 2005. The OHCHR field presence was a turning point in this respect as it breached the general Indian opposition to UN involvement in the peace process in Nepal. It is therefore useful to briefly review the conditions that led to the establishment of the mission.

In Nepal, the democratic surge in 1990 had again come alive in the neutral and 'non-political' field of human rights. Nepalese civil society and human rights advocates, supported by international human rights organizations, had long advocated an OHCHR presence to monitor the severe human rights abuses during the war. Their efforts had initially met with firm opposition from India, the US, the UK and the Nepalese government. The reasons varied. The Indian government was generally sceptical to the usefulness of a UN mission in the subcontinent and, according to some observers, specifically feared a human rights mission might set a precedent for international monitoring in Kashmir, where Indian troops were regularly accused of human rights abuses.<sup>81</sup> The US government concluded that UN-monitoring would be exploited by the Maoists and their supporters to discredit the government security forces. The UK evidently supported its larger ally in what was cast as a front in the 'war on terror'. The Nepalese government did not want the indignity of having an international monitoring agent scrutinize its national armed forces.

The matter was raised at the March 2005 Human Rights Commission session in Geneva, which happened to take place just a month after the King's coup that abolished parliamentary democracy and sparked a worsening human rights situation. For the proponents of monitoring, the timing was good. Human rights groups in Nepal appealed to the international community to appoint a Special Rapporteur for Nepal or a field mission.<sup>82</sup> When the Swiss, backed by the EU (minus UK) were ready to propose a special rapporteur, India, the US and the UK proposed a field mission of the OHCHR, which they thought would be a lesser mechanism, and prevailed on the Nepalese government to accept it. The Nepalese government had a few months earlier signed an agreement for very limited technical assistance with the OHCHR, and the resolution that passed in 2005 in favour of a field mission seemed rather toothless, only requiring Nepal to accept 'technical cooperation'.

<sup>80</sup> 2 July 2006 letter by G.P. Koirala.

[http://www.satporgtp/countries/nepal/document/papers/Prime\\_Minister\\_Koirala\\_Letter1.htm](http://www.satporgtp/countries/nepal/document/papers/Prime_Minister_Koirala_Letter1.htm)

<sup>81</sup> Ehtasham Khan, 'Why India holds key to peace in Nepal,'

<http://www.rediff.com/news/2005/apr/06nepal.htm>

<sup>82</sup> <http://humanrights.palermo.magenta->

[aps.dk/upload/application/0d882eed/public\\_appeal\\_from\\_the\\_nepalese\\_human\\_rights\\_community\\_5.pdf](aps.dk/upload/application/0d882eed/public_appeal_from_the_nepalese_human_rights_community_5.pdf) Public Appeal from the Nepalese Human Rights Community, March 15, 2005.

If the Nepalese government and its international supporters had thought this would be a non-intrusive field mission, they were mistaken.<sup>83</sup> The High Commissioner, Louise Arbor, had negotiated a field mission with a strong mandate, authorizing extensive powers to monitor, investigate, advise, issue public reports and communicate with the state as well as the rebels in order to address violations and improve the climate for greater respect for human rights. In addition to the headquarters office in Kathmandu, the High Commissioner could establish sub-offices in the districts at her discretion, although ‘bearing in mind’ the view of the government.<sup>84</sup> The first team arrived already in May. The office expanded rapidly and soon had regional sub-offices up and reporting.

The Indian government came to accept the OHCHR mission and, as the peace negotiations moved towards a conclusion, actively endorsed a limited UN mission as well. In this, it seemed, it made another miscalculation.

The premise for Indian support to the peace talks had been that either the Maoists would be de-radicalized by having to operate in the political arena, or if not, at least they would lose in free and fair elections. Delhi for this reason welcomed UN election assistance to facilitate international monitoring and legitimize the results. In this perspective, the more UN presence the better. The Indians ‘wanted to plaster the countryside with election monitors,’ a UN official later recalled.<sup>85</sup> In an unusual measure, the Indian Ministry of External Affairs even called together foreign diplomats in Delhi in late 2006 to request their support for the UN mission in Nepal then being planned in New York.<sup>86</sup> When the Nepalese parties later failed to agree on the system of election to be adopted, and the Constituent Assembly elections were postponed for a second time, the Indian government became visibly nervous. The Indian Foreign Secretary Shyam Saran arrived in Kathmandu in November 2007 and publicly accused the Maoists of obstructing the process. When the elections finally were held, a high level Indian official publicly declared that he hoped the Nepali Congress would win.<sup>87</sup> When the elections results gave a large victory to the Maoists, the Indians were as shocked as the Nepali Congress, the value of the UN as seen in Delhi was deflated accordingly.

Two more mandate issues must be considered before assessing the work of the UN and its impact on the peace process. One relates to the absence of peacekeepers in the original mandate; the other arose later when efforts were made to strengthen the mandate when the peace process seemed to falter and new violent conflicts erupted.

#### 4.4 No peacekeepers

Both the Nepalese parties had ruled out an international peacekeeping force from the time they started to consider an international mechanism to aid the transition from war to peace. The Maoists had been quite clear. ‘No, no foreign troops’, Prachanda told an Indian journalist soon after the 12-point agreement was concluded in November 2005.<sup>88</sup> Instead, the

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<sup>83</sup> Interview, UN official, December .2008. The Nepalese government and its international supporters were not alone. Some critics in Indian saw the field mission as the weaker mechanism and castigated the government for failing to side with the forces of democracy and human rights . Praful Bidwai, “India’s U-turn on Nepal,” *Frontline*, vol. 22 (10), May 07 - 20, 2005

<sup>84</sup> Art. VI, Agreement, <http://nepal.ohchr.org/en/AboutUs.html> Signed in Geneva 8 April and in Kathmandu 10 April 2005.

<sup>85</sup> Interview, Kathmandu, December 2008.

<sup>86</sup> Interview, Norwegian diplomat, October 2008.

<sup>87</sup> In a television interview, the national security adviser, M.K. Narayanan ‘indiscreetly revealed India’s preference for a NC [Nepali Congress] victory’. Rita Manchanda, “Waiting for ‘Naya’ Nepal,” *Economic and Political Weekly*, 19 July 2008, p. 25.

<sup>88</sup> In *TheHindu* interview, February 2006, *op.cit.*

negotiations settled for UN supervision of the two armies and their armories (9-point agreement June 2006). To underline that this was not even a distant relative of a conventional blue-helmets operation, both the Nepalese parties specified that the UN monitors must be ‘qualified *civilian* personnel’, as Prachanda and G.P. Koirala later put it in their identical letters to the UN Secretary-General requesting assistance.<sup>89</sup>

The Nepalese insistence on civilian monitors created some headaches in the Department of Peacekeeping Operations (DPKO) in New York. Finding qualified civilians to manage and monitor two recent belligerent armies was in itself difficult. There was also a risk of hostile attacks, either a deliberate provocation or a situation spiraling out of control. There was little or no precedent for this kind of missions,<sup>90</sup> and no standard operating procedures in the DPKO for recruiting, deploying, protecting and – if need be – extracting the force. Resistance in DPKO eventually gave way as it became clear that it was a question of having a monitoring force that would be civilian, at least in appearance, or no force at all. The DPKO then settled for ‘monitors with military experience’, and/or ‘active military officers in civilian attire’, demanding that the monitors at least must have military knowledge and experience.<sup>91</sup> Always sensitive to form, the Nepalese continued to insist on the term ‘civilian personnel’, which was used in the final agreement between Nepal and the UN, although preceded by the adjective ‘qualified’. In practice, UNMIN obtained agreement to recruit a majority of serving military officers and a minority on leave or retired, who were deployed in civilian attire with a blue UN cap.

Why the sensitivity? On the Nepalese side there were several concerns. There was a strong sense of national pride. Nepal had a long tradition of providing peacekeepers to the UN – in fact, this had been one of the two principal roles of the Nepal Army prior to the insurgency (the other was ceremonial functions at the Palace). The prospect of Nepal itself needing foreign peacekeepers was disturbing and humiliating, and not only to the army. Nepal, it was broadly understood in the public at large, was a sender of peacekeepers, not a receiver.<sup>92</sup> Both the Maoists and the Nepal Army recognized that the presence of international peacekeepers represented a limitation on their status and a potential constraint on their power and movement. While both had agreed to end the civil war, the most difficult issues of implementation remained, above all related to the future of the two armies. Moreover, both the Maoists and the mainstream parties realized the importance of Indian consent and support for the peace process. By 2005, as we have seen, the Maoists were starting to court the Indian government. The mainstream parties, particularly the Nepali Congress, had long had a close relationship with the India’s Congress Party and considered itself to have privileged access to Delhi. The Indian government, it was clear, opposed a UN peacekeeping force and made the point clear to the Nepalese parties during the decisive negotiations on this point. The 8-point agreement of June 16, 2006 which specified that the international advisors must be civilian was concluded just after G.P. Koirala had been warmly received by high-level officials on a visit to Delhi, and Prachanda had consulted with Delhi as well.<sup>93</sup>

India’s opposition was partly a large power reaction against international peacekeeping operations in what it considered its backyard. This was not unusual; there were, for instance, military observers but not regular peacekeeping forces in the US ‘backyard’ in Central America after the civil wars there in the 1970s and 80s. On the other hand, Washington did accept, indeed promoted, a UN force in Haiti, and Russia originally wanted a full UN

<sup>89</sup> Italics added. The wording in the letters is: ‘deploy qualified civilian personnel to monitor and verify’ the two armies. Letters of 9 August 2006. S/2006/920, *op.cit.* Annex.

<sup>90</sup> Proponents cited the Nuba mountains mission as a possible model.

<sup>91</sup> S/2007/7, *op.cit.*, p. 7.

<sup>92</sup> I am indebted to Suman Pradhan, a journalist and later UN employee, for discussion on this point.

<sup>93</sup> <http://www.kantipuronline.com/kolnews.php?&nid=76803> posted 6-16-2006.

peacekeeping operation in Georgia in 1993. The Indian position also had a more specific explanation, and it was called Kashmir. In the Indian political culture, the UN was inextricably bound up with the Kashmir issue, where the Indian official narrative is that India had referred the matter to the UN in good faith in connection with the 1947 partition, and Nehru had even promised a plebiscite. The move had backfired, however, as the UN had not insisted on the prior withdrawal of Pakistani troops from the Pakistan side of the Line of Control before plebiscite. Instead, the UN had then and in subsequent years been let itself be used by Pakistan and the US to put pressure on India over Kashmir, passing resolutions calling for plebiscite in the Indian state of Jammu and Kashmir and censoring India for moving its troops close to 'the Pakistani border'. Not until the 1972 Simla agreement with Pakistan, where the latter agreed (after a devastating defeat in a war with India) that all bilateral matters should be handled bilaterally by the two governments. That seemed to exclude Indian Kashmir from UN scrutiny, but the uprising in 1989, which accelerated in the 1990s to plunge the state into chaos and violence, generated new concerns in Delhi that it would face pressures to accept third party mediation. This could mean losing control over Kashmir and have adverse implications for "the distribution of power between and among India's overlapping nationalities" elsewhere in the subcontinent.<sup>94</sup>

In short, from Delhi's perspective the UN was at best unruly and unpredictable, at worse, an instrument of India's adversaries. In Nepal, the Indian government came to accept that the UN could perform a useful role in monitoring the elections and related provisions for the two armies in a transition period. But international peacekeepers were ruled out as a visible limitation on India's power and a possible precedent for monitoring of development within Indian Kashmir.

#### 4.5 Social exclusion, political inclusion and the thorny issue of mandate expansion

Only a year after the peace agreement had been signed the process became stuck and, it seemed, was on the point of derailing. The report issued by the UN Secretariat in October 2007 detailed the difficulties.<sup>95</sup> There was increased violence, particularly in the Terai region bordering India's northeast. Political agitation around identity politics to promote the rights of "the Madhesi" (a constructed social category with more recent political significance to denote lowland castes in the Terai) rapidly spilled over into armed politics with an overlay of criminal activity. By the end of 2007, violence and impunity had become generalized and most government officials in the rural areas of the Madhesi districts had deserted their posts. Elsewhere law and order was disturbed by *bandh*, bombs (including in Kathmandu) and assassinations, and undermined by the continued failure of the justice system to address grave human rights violations committed before the cease-fire took effect.

Politically things were falling apart as well. Elections to the Constituent Assembly had been postponed twice. The interim government formed by the Nepali Congress-led coalition and the Maoists to jointly manage the transition split apart when the Maoists left in disagreement over the election system and the establishment of the republic. There were difficulties in the Maoist cantonments - the Nepali Congress Finance Minister refused to pay the salaries of the PLA soldiers in the camps, and the Maoists refused to discharge minors (combatants under 18 years old) who had been identified in a UN verification process.<sup>96</sup> There was no progress on

<sup>94</sup> Maya Chadda, *Ethnicity, Security and Separatism in India*, New York: Columbia University Press, 1997 p. 198.

<sup>95</sup> S/2007/612, *op.cit.*, 18 October 2007.

<sup>96</sup> It was agreed that persons under 18 years old by 25 May 2006, or who had joined the PLA before that date, were not considered bona fide combatants and were to be discharged immediately. The 25 May date was the day

the critical issue of dealing with the two armies through partial demobilization, reintegration (of Maoist combatants into the Nepal Army), and democratization (of the Nepal Army), although both parties had committed to do so according to a procedure identified in the peace agreement and affirmed by the Interim Constitution (June 2007). A number of disaffected and traditionally marginalized groups – the Madhesi movement in the Terai, the Janajati (indigenous) peoples, Dalits (low caste) and women – demanded to be included in the negotiations on critical issues relating to the transition. While ‘traditionally marginalized’ groups are variously defined, the UN estimated that the Madhesis and Janajatis alone constituted over half of Nepal’s total population.<sup>97</sup> In the Terai, as we have seen, demands were accompanied by violence against government officials, high caste communities and political rivals.<sup>98</sup>

Underlying these problems was “a deeper gulf of perspective regarding the extent and breadth of the political, social and economic changes the country should undergo’, as the UN October report noted.<sup>99</sup> The peace agreement had raised expectations about greater social justice and political inclusion, particularly for traditionally marginalized groups, and to this end foreshadowed a restructuring of Nepal’s unitary state in direction of a federal structure. In Art. 3.5 of the peace agreement the parties promised in sweeping terms to

address the problems related to women, Dalit, indigenous people, Janajatis, Madhesi, oppressed, neglected minorities and the backward by ending discrimination based on class, caste, language, sex, culture, religion, and region and to restructure the state on the basis of inclusiveness, democracy and progression (sic) by ending present centralized and unitary structure of the state.

The elections to the Constituent Assembly were the gateway to this comprehensive agenda of social and political change. The elections had crystallized the zero-sum nature of politics in Nepal, where the power holders were expected to keep a tight rein on the benefits of office, and there seemed to be no neutral institutions to mediate the intensely partisan politics.<sup>100</sup> All parties and politically conscious groups in Nepal’s complex mosaic of caste, class, religion and region now positioned themselves for the coming contest. As Ian Martin put it to the Kathmandu press in October 2007:

“[T]he process that began very much as a peace process between one ideological armed movement, the Maoists, and the State, has become complicated by the insistence of traditionally marginalised groups that they need to have a central part in a process that is to restructure the State in accordance with general commitments to inclusion.”<sup>101</sup>

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before the Maoists and the government signed the cease-fire code of conduct. It was suspected – and soon confirmed – that the Maoists had tried to inflate the size of the PLA by signing up additional soldiers just prior to the cease-fire.

<sup>97</sup> UN *Peace Operations. Year in Review*, New York: UN/ DPKO, p. 38. The term “traditionally marginalized groups” is a politically significant category with quasi-legal implications for affirmative action.

<sup>98</sup> John Bevan and Bhaskar Gautam, *Political Economy Analysis: The Madhes/Terai*, unpublished paper, Kathmandu August 2008.

<sup>99</sup> S/2007/612, *op.cit.*, p.3.

<sup>100</sup> See e.g. Lok Raj Baral, Nepal. *Problems of governance*. Delhi: Konark, 1993. On the absence of agents to mediate and contain conflict in Nepali politics, the journalist Aditya Adhikari writes perceptively that the political parties use other institutions such as the bureaucracy, the trade unions and student unions for strictly partisan purposes, resulting in “a political process that...is characterized by naked confrontation — in government, on the streets and in the House — of social and political forces bent on maximizing their own power at the expense of others.” Struggle for survival, *Kathmandu Post*, 6 July 2009, [www.ekantipur.com](http://www.ekantipur.com)

<sup>101</sup> Press conference, Kathmandu, 10 October 2007. [www.unmin.org.np](http://www.unmin.org.np)



The most immediate issue was the need to determine the system of elections; the Maoists and marginalized groups advocated proportional representation, while most of the mainstream parties wanted first-past-the post. More generally, the disaffected groups wanted recognition of their demands in the form of principles and agreements that would be included in the established political discourse and guide the Constituent Assembly. Thus, the Madhesi movement had already in April 2007 secured a commitment to federalism through an amendment to the Interim Constitution. In August that year the Madhesi obtained the further commitment to ‘regional autonomy’ in a 23-point agreement with the government. In Nepalese politics, such agreements typically require constant pressure, vigilance and renegotiation, thereby giving the insider a clear advantage. The insiders in the transition process toward the new era – the “new” Nepal in Maoist terms - were the established parties in the Seven-Party Alliance, led by the Nepali Congress, and the Maoists who had negotiated the peace agreement. Their claims to represent the traditionally marginalized groups were thin or strongly contested. In the Terai, the most militant Madhesi groups were led by ex-Maoists who now clashed violently with their erstwhile comrades. The second deep gulf of perspective that emerged in 2007 was thus between the insiders in the peace process and the outsiders.

UNMIN officials watched developments with a growing sense of concern and helplessness. As Martin noted in a careful understatement, events had “made the management of the process more complicated.”<sup>102</sup> To strengthen his hand Martin returned to the Security Council at the end of the year to seek a broader mandate. He wanted explicit backing to mediate in both the primary issues identified in the peace agreement (notably relating to the two armies) as well as in secondary conflicts arising from demands by disaffected and traditionally marginalized groups to be included in the peace process. Concerned about the deteriorating security situation, he also wanted a limited UN police presence during the election period.<sup>103</sup>

In legal terms, a formal mandate expansion to authorize mediation was probably not necessary. A general ‘good offices’ function seemed inherent in the position of the SRSG and was implicitly authorized by the original letters from Prachanda and Koirala to the UN in August 2006 that requested UN assistance in certain specified areas “and the entire peace process.”<sup>104</sup> The additional clause had been inserted on the advice of UN officials who thought the mission could need the extra elbowroom, and, on paper at least, the Nepalese parties had agreed. The clause was not, however, explicitly included in the mandate. As for the marginalized groups, the Security Council had authorized the mission to “pay special attention to the needs of women, children and traditionally marginalized groups in the peace process” (Res. 1740/2007). The formulation was sourced to the peace agreement and reflected customary conditionality in UN peace operations as well.

However, if UNMIN were to assertively promote a dialogue among the insiders and outsiders and mediate among the conflicting perspectives on what the promises of social and political inclusion meant in practice, the mission needed strong political backing. Earlier efforts by UNMIN in this direction had produced few positive results, but generated considerable criticism. Recognizing the tight timeline for elections (originally scheduled for June 2007), the mission had from the beginning tried to promote political inclusion of socially excluded and traditionally marginalized groups. By September 2007 UNMIN staff totaled almost 700 civilians, of whom about half were internationals, posted throughout the country to strengthen the peace process and prepare for the elections while paying special attention to women and traditionally marginalized groups. UNMIN could report back to New York that “the first-ever national conference of Madhesi women with representation from over 20 Terai districts” had

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<sup>102</sup> Ibid.

<sup>103</sup> Ian Martin, Press Statement, 6 November 2007. [www.unmin.org.np](http://www.unmin.org.np)

<sup>104</sup> S/2006/920. Appendix.



taken place, as well as several “demonstrations” by the most disadvantaged of the Dalit caste. Mindful of Nepalese sensitivities, the UN’s role was described in modest terms (‘participated as observers’).<sup>105</sup> More controversially, Ian Martin had been talking to a range of Madhesi groups to get a sense of their grievances, and staunchly defended his right to do so. “While UNMIN has not met or sought to meet with the leadership of armed Madhesi groups,” he told the press, “UNMIN has met and will continue to meet with a wide range of representatives of traditionally marginalized groups.”<sup>106</sup>

It all seemed perfectly legitimate and in line with the requirements of promoting a sustainable peace. The official UN narrative put the case succinctly:

UNMIN’s mandate includes paying special attention to the needs of women and traditionally marginalized groups, and throughout the year the mission advocated strongly for the need for dialogue with these groups as well as for an increase in the representation of women in all fields of public life.... Ongoing dialogue is essential to ensure their participation in the election for the establishment of a truly representative Constituent Assembly where they will be properly represented and which is necessary for the restructuring of the state that they seek.<sup>107</sup>

In formal terms, UNMIN’s promotion of dialogue with traditionally marginalized groups harmonized with the Nepalese political discourse as well. The language of social, economic and democratic inclusion had by this time become a political mantra, embraced officially by all political parties, by the just-completed Tenth National Development Plan, by the Election Commission, and, as noted, was enshrined in the peace agreement.

To the Nepalese, however, it was a question of ownership. There was a sense that these issues and related problems had to be addressed by the Nepalese through the political process. The negotiators of the peace agreement had sought UN assistance in the form of technical and financial support, and for quite specific purposes. On this fundamental principle, at least, the insiders in the peace process seemed to agree. Beyond that, the rationale for a UN role was unclear, but the counterarguments were legion. The deep gulf in perspectives on the extent and breadth of social change that Martin had referred to made the established castes and classes who until now had dominated politics and controlled the state – the Kathmandu Valley establishment – fearful of international involvement that would undermine their power. In their perspective, the Maoists presented enough of a challenge without the UN and the donors also lending their weight to traditionally marginalized groups. Some UN officials indeed saw themselves as advocates for the disadvantaged against this establishment.<sup>108</sup> But even among Nepalese intellectuals, human rights activists and in civil society as a whole there was suspicion of UNMIN’s work with marginalized groups. The extraordinarily complex social and political make-up of the country raised questions whether outsiders had the necessary expertise to make a useful contribution. ‘The question,’ noted a distinguished Nepalese sociologist, ‘was and is one of distinguishing between traditionally marginalized groups and ‘traditionally marginalized groups’. Could UNMIN validly and sharply distinguish between the two?’<sup>109</sup> Journalist Aditya Adhikari described the reactions as follows:

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<sup>105</sup> S/2007/612, op.cit., pp. 10-11

<sup>106</sup> Press Conference, Kathmandu, 6 November, 2007. [www.unmin.org.np](http://www.unmin.org.np)

<sup>107</sup> UN Peace Operations. *loc.cit.*

<sup>108</sup> Interviews, UN officials, Kathmandu, December 2008.

<sup>109</sup> Prof. Chaitanya Mishra, communication with the author, August 2009.

Many of these [UN] individuals had previously worked in places under tyrannical governments... and perceived themselves as working for the rights of the inhabitants, and against exploitative regimes. Such attitudes were carried into Nepal as well, where these officials adopted a simplistic view of Nepali politics as solely determined by caste, where a perennially oppressed population was pitted against evil Brahminical elite. For the Nepali political class, civil society and media, fiercely proud of the achievements of the People's Movement of April 2006 and subsequent developments, such attitudes were patronizing, insufficiently respect of the country's political process and ignorant of Nepali political history.<sup>110</sup>

Another Nepalese commentator characterized UNMIN's positions on social exclusion issues as 'imperial-like'.

UNMIN, from my point of view, was trying to eat what it could not chew. The search for broadening of power may still undo its and Nepal's achievements, particularly in relation to the politics of 'ethnic federalization'. Within a broadly democratic set up, the various constituent groups ideally negotiate politically; not by means of international organizations.<sup>111</sup>

As the UN officials fanned out across the countryside, preparing for an election that was continuously postponed, reporting on developments to New York but not to the Nepalese, and earning good salaries in a poor country, the 'white vehicle syndrome' started to appear. The UN mission was a visible and easy target for disappointed and angry Nepalese who saw the peace process stalling. The limited mandate that the Nepalese had imposed on the mission weakened the ability of the UN to influence the speed and direction of the implementation of the agreement, for which the UN then was blamed.

Outside its strictly defined mandate, UNMIN could influence the peace process only through steady advocacy and careful diplomacy. This the SRSG consistently and patiently did, urging the parties to move forward with the electoral process and security sector reform, implement provisions regarding return of property seized during the conflict, strengthen the justice and police system, deal with human rights violations and – importantly – establish a peace monitoring mechanism to ensure that commitments made were actually implemented. Yet a general advocacy role in relation to peace implementation was not sufficient to create a strong constituency for the UN among the political classes. When UNMIN offended powerful vested interests by moving into contested areas, no one came forward to offer support.<sup>112</sup> This was essentially what happened when UNMIN asserted its right to do political work among the marginalized groups, particularly in the Terai, and which shot down Martin's efforts to secure an expanded mandate from the Security Council.

The Terai was an especially sensitive issue to the Nepalese and the Indian political establishment. The Madhesi movement raised the specter of federalism fueled by violence and, to some Nepalese, Indian intrigues.<sup>113</sup> None of the established parties, including the

<sup>110</sup> Aditya Adhikari, "Shacked or unleashed. UNMIN in Nepal's Peace process", *Himal Magazine*, October 2008. [www.himalmag.com/Shackled-or-unleashed-UNMIN-in-Nepal-s-peace-process\\_nw1984.html](http://www.himalmag.com/Shackled-or-unleashed-UNMIN-in-Nepal-s-peace-process_nw1984.html)

<sup>111</sup> Prof. Chaitanya Mishra, communication with the author, August 2009.

<sup>112</sup> Even the Maoists joined the criticism. "They are behaving like activists and journalists, which is against their mandate," a senior Maoist leader told *The Rising Nepal* newspaper. Cited in Dhruva Adhikary, UN's welcome mat in Nepal frays," *Asia Times Online*, 11 December 2007, [www.atimes.com/atimes/South\\_Asia/IL11Df03.html](http://www.atimes.com/atimes/South_Asia/IL11Df03.html)

<sup>113</sup> Publicly the Indian government showed some benign interest in the question of federalism, for instance, the Ministry of External Affairs organized a conference on different kinds of federalism in Varanasi. *Report on the "Partnership in strengthening democracy and development in Nepal" conference held in Varanasi on 26-27 September 2008*. Unpublished report.

Maoists, had worked out their position on the nature and criteria of federalism.<sup>114</sup> They expected to thrash this out over time, probably a long time, in the Constituent Assembly. In the meantime, the mainstream parties feared that the UN would at best complicate matters and at worst legitimize the Madhesi movement by meeting with their representatives – just as the UN by its very presence in the peace process had helped legitimize the Maoists as a partner. When Martin defended UN’s right to meet representatives of the traditionally marginalized groups, including the Madhesi, even non-partisan Nepalese observers expressed concern. “By suddenly raising the expectations of certain ethnic – or regional – groups in a country known for its ethnic diversity, the UNMIN may unwittingly be laying the grounds for avoidable conflicts and tensions. The UNMIN thus has to avoid issues that need to be sorted out by politicians and voters.”<sup>115</sup>

Although many Nepalese readily saw an Indian hand behind the unrest in the Terai, the Indian government was their strongest *de facto* ally in efforts to limit the UN’s role in this area. Indian officials protested strongly when Martin met with representatives of Madhesi groups to listen to their grievances. They protested again when UN officials from the humanitarian affairs office (OCHA) talked to militant groups operating in the Terai to protect distribution of humanitarian assistance after the flood in the area in late 2007.<sup>116</sup> In the Terai and beyond, Indian officials saw UNMIN civil and political affairs officers developing contacts with Nepal’s political class ‘down to the grassroots’, and protested. “They [UNMIN] want to treat Nepal as a UN protectorate, they are going to mess it up”, a senior Indian official in Delhi told a well-known Nepalese journalist.<sup>117</sup> In terms of the proposed mandate expansion, this was where India drew a red line. “Good offices, mediation, facilitation, Madhes – it was all out,” as Martin later recalled the message conveyed by the Indian ambassador in Kathmandu.<sup>118</sup>

The mandate issue came at a bad time. Indian frustrations over postponement of the elections were mounting, and some officials blamed UNMIN for not putting enough pressure on the Maoists. If the UN could not even help to keep the timeline on elections, the mission seemed of little use to Delhi. When the Security Council in November was ready to consider the extension of UNMIN’s mandate for another six months, it had before it a ‘a stern message’ from the Indian government to the effect that renewal should be subject to downsizing the mission and limiting its role.<sup>119</sup> At this point, China was also said to be concerned over the sizable and active role of the UN in a country neighboring on Tibet, which in the Chinese political lexicon has about the same significance as Kashmir has for India. Neither government wished to see a precedent for active UN mediation in conflicts involving oppressed or marginalized communities in their part of the world. With opposition or caution signaled by two major powers, and no strong advocate for an expanded mandate, it was a relatively quick and easy consensus. The Security Council extended the mission for 6 months, but with no change in mandate. Downsizing would start after the elections as originally envisaged.

<sup>114</sup> Marit Haug, “Decentralization in Nepal: what are the alternatives?” Oslo: Norwegian Institute for Urban and Regional Research, 2008. <http://www.nibr.no/publikasjoner/notater/990/>

<sup>115</sup> Dhruva Adkhikary, *op.cit.*

<sup>116</sup> The Indians were particularly upset that OCHA officials had crossed into India, where some of the armed groups had office, to ask the militants not to obstruct distribution of relief supplies.

<sup>117</sup> Prasant Jha, “Delhi View,” *Nepali Times*, 8 November 2007. [www.nepalaitimes.com.np/issues/372/Headline/14120](http://www.nepalaitimes.com.np/issues/372/Headline/14120)

<sup>118</sup> Interview with author, Kathmandu, December 2008.

<sup>119</sup> Prasant Jha, *op.cit.*

## 5. Downsizing

Elections to the Constituent Assembly were finally held in April 2008, resulting in a surprise win for the Maoists who took 38 percent of the seats and formed the government in coalition with other parties, including the large and mainstream communist party (UML). Women and traditionally marginalized communities also secured unprecedented representation: one-third of the elected members were women, and Janajatis, Madhesis and Dalits were represented in greater numbers than in any previous parliament and “the considerable overrepresentation of historically dominant groups has decreased,” as UNMIN reported to New York.<sup>120</sup> It seemed a high point in the peace process, and UNMIN started to downsize.

By October 2008, the strength of the mission was less than half of what it had been the previous year. The election monitors had gone, of course, as well as some of the personnel that had helped position the traditionally marginalized group in the elections. UNMIN’s military observers were still in place, although in greatly reduced numbers (only 85, as against 182 the previous year). The mandate had been renewed in mid-2008 amid speculations that it would be the last time. When the mandate again came up for renewal towards the end of the year, the government, now headed by Prime Minister Pushpa Kamal Dahal “Prachanda, requested that the mission stay on. The opposition was mounting, however. The Nepali Congress - the major mainstream party now in suddenly cast into the role of the opposition – was smarting from the humiliating defeat in the elections and renewed its attack on the UN. India’s position was known. At the Security Council the members were focusing on crises elsewhere in the world. The only permanent member on the Security Council to take a special interest in Nepal, the UK favored downsizing. There was a sense that the UN had successfully discharged its mandate in Nepal – UNMIN’s presence had been partly tied to the elections, which were in the past - and that the peace process was on track. While the mandate was renewed, the status of the mission was downgraded. This meant that it would be headed by a Representative of the Secretary-General (RSG), rather than as previously by a Special Representative of the SG (who has the rank of an Under-secretary General). Ian Martin, who had represented the UN continuously since 2005 when he first headed the OHCHR mission, left Nepal in January 2009.

At UNMIN, officials maintained that the peace process was quite fragile and that mission was important to keep it on track. A mission from the UN Secretariat arriving towards the end of the year appeared to agree.<sup>121</sup> An independent assessment of the military observers group requested by Martin before he left concluded that now was the time to strengthen, not reduce the contingent.<sup>122</sup> The challenges certainly were legion, as Martin told the Security Council in his departure briefing.<sup>123</sup> Numerous issues arising from the legacy of the war were unresolved – known human rights offenders had not be prosecuted, property seized had not been returned and, most importantly, the two armies were no closer to being reintegrated, democratized and selectively demobilized than when the cease-fire code of conduct had been signed in May 2006. Almost 20 000 Maoist combatants were remained holed up in their camps, while the Nepal Army had started recruiting new soldiers in violation of the peace agreement and the related agreement on the management of the armies in the transition period (AMMAA). Two

<sup>120</sup> Report of the Secretary-General on the request of Nepal for United Nations Assistance in support of its peace process, S/2008/313, May 12, 2008, p. 4.

<sup>121</sup> Interview, UN official. Kathmandu December 2008.

<sup>122</sup> Interview with Major General (Ret.) Michael Smith, Kathmandu, Dec 2008, who led the mission.

<sup>123</sup> Briefing to the Security Council, 16 January 2009. [www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf](http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf)

hostile armies whose political representatives could not agree on a way to move forward was clearly a considerable threat to the peace. The nature of the peace remained to be defined as well. The peace agreement – which was very general in nature – posed major challenges of implementation relating to the promised restructuring of the state in the name of social and political inclusion. The Constituent Assembly was to address these problems through constitution-writing, but all the difficult questions lay ahead. There was no general agreement on the criteria for federalism (by ‘ethnicity’, economy, or ‘region?’), or the principles for optimal decentralization and redistribution of income, and no ready precedent in the modern world for peacefully dismantling a unitary state in favour of federalism. In the southeastern lowlands of the Terai, armed groups had already mobilized to press their claims.

In this perspective, it seemed an odd time to downsize and downgrade a mission established to assist the peace process. Of course, other UN agencies of the UN with specific tasks to support the peace process would remain. OHCHR would retain its field mission. UNDP was developing a program to assist the constitution process. UNICEF had prepared a program to help demobilized Maoist child soldiers. But these agencies lacked the political weight and status of UNMIN that flowed from its mandate to monitor critical elements of the peace agreement and to assist “in the entire peace process”.

## 6. UNMIN’s contribution to peace implementation

To what extent did UNMIN contribute to consolidate the peace – and by implication, what were the opportunity costs of early downsizing? The analysis below considers, first, the areas where the mission succeeded in providing what arguably were indispensable contributions to the peace process; and, second, areas where the mission tried but failed to shape developments. The analysis then returns to the question of the strength and weaknesses of national ownership of a peace process.

As the narrative of the peace negotiations has shown, the substantive hurdles in the talks were the role of the monarchy, elections to a constituent assembly, and restructuring of the state. As the parties neared agreement on these principles, the difficult question remained on how to manage the transition from war to peace. The central element was the bargain that permitted the Maoists to retain an army during elections, and imposition of some constraints on both armies in the period leading up the Constituent Assembly elections. The UN’s most critical contribution was to facilitate this transition by monitoring the two militaries and assist in creating conditions for a credible election. UNMIN’s role in these respects helped move the conflict over the critical hurdle that separated the military from the political arena. Only a neutral, third party like the UN could have satisfactorily taken on these functions.

### 6.1 Monitoring the militaries

The UNMIN’s monitoring role in the military sector resembles the concept of “security guarantee” as developed by Barbara Walter.<sup>124</sup> Walter refers to armed peacekeepers inserted between ex-belligerents in order to reduce the security dilemma, i.e. a condition whereby both parties strengthen their own position in case the other will defect from the agreement, and by doing so create a mutual sense of insecurity that undermines the cease-fire. The problem with this argument, of course, is that peacekeepers may not have the mandate or capacity to prevent a break-down of the cease-fire, as Stedman has pointed out.<sup>125</sup> Still, even

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<sup>124</sup> Barbara F. Walter, *op.cit.*

<sup>125</sup> Stephen John Stedman, “Introduction” in Stephen John Stedman et al., *op.cit.* pp. 5-8.

in this situation the peacekeepers constitute a trip wire that, if crossed, will trigger some disagreeable consequences – the UN Security Council is likely to be involved, mandates may be changed, pressure may be mounting to constrain the offender, etc.. Thus, a UN contingent with even limited mandate and capacity has some power of deterrence. In this respect, UNMIN's unarmed observers in mufti and UN-blue caps were not dissimilar from a conventional peacekeeping force authorized under Chapter VI of the UN Charter to maintain the peace as per the agreement of the parties concerned.<sup>126</sup> In most other respects the observer contingent was quite different – it was small, unarmed and without force protection. In the arsenal of international peace operations it represented an intriguing innovation.

The UN Arms Monitoring Office (AMO) was based on two principles. The contingent was light and it depended upon the cooperation of the belligerent parties.<sup>127</sup> After registering the arms of the PLA, the observers placed the weapons in locked, central depots. The same number of arms from the Nepal Army were similarly decommissioned and deposited. Only the two armies had the keys to their respective depots, but the locks were alarmed and under electronic surveillance by the AMO observers positioned nearby the depots on a 24 hour basis. Restricting access to weapons was one important constraint on the ability of the two armies to re-engage in armed conflict or intimidate the population during the election campaign. The second major constraint was on the movements of the armies themselves. The PLA was cantoned in 7 main sites, each consisting of a cluster of scattered camps built by the soldiers. The Nepal Army was confined to their barracks, as per the agreement. Mobile AMO teams of international observers visited the 21 Maoist satellite camps and the Nepal Army barracks to monitor movements, but did not maintain continuous observation. There was, in other words, considerable scope for the parties to cheat.

A high-level tripartite commission was established to deter cheating by reviewing complaints and investigate reported violations, and also resolve conflicts. This Joint Monitoring Coordination Committee (JMCC) consisted of 9 representatives – 3 from the Maoists, 3 from the Nepal Army, and 3 from UNMIN, including the chairman, a Norwegian general who headed the contingent. In addition, AMO fielded 10 joint teams consisting of a Maoist and Nepalese soldier, who together with an international observer conducted village patrols to listen, recommend small development grants, and demonstrate that the PLA and the Nepal Army at least on this level were no longer enemies but could actually work together. Somewhat misleadingly they were called Joint Monitoring Teams; they did not monitor the arms depots or the two armies as the Nepal Army chief did not want a Maoist inside his compounds.

This skeletal structure – with peak strength of around 200 persons including Nepalese support assistance – was the grand total of UNMIN's monitoring capacity to ensure that the agreement to constrain the two armies was observed. Yet it did the trick. In the year-and-a-half period leading up to the elections, the head of the contingent, General Jan Erik Wilhelmsen, could report that

there were no hostilities, nor clashes between the Parties, no attempts to occupy new ground, no laying of mines, no supply of ammunition or weaponry, no arming of civilians, no training of terrorists.... no bombing of civilians and very limited hostile propaganda.<sup>128</sup>

<sup>126</sup> Operations authorized under Chapter VII obviously differ.

<sup>127</sup> This account draws heavily on *Report from Arms Monitoring Office/United Nations Mission in Nepal 2006-2008 – Chief Arms Monitor Executive Summary*, Kathmandu July 2008, prepared by Jan Erik Wilhelmsen, the report by Michael G. Smith, *op.cit.*, and interviews with Wilhelmsen and Smith.

<sup>128</sup> Wilhelmsen, *op.cit.*, Sec. 8.

There were of course points of tension and violations of both the text and spirit of the AMMAA. The tripartite JMCC investigated 88 complaints, ranging from “arbitrary detention, harassment and the denial of freedom of movement of people and goods” to illegal logging by the Maoists. Less than half (34) could be substantiated, almost all of which were violations by the Maoists.<sup>129</sup> Yet these violations pale in significance compared to the general picture of two armies emerging from a bitter ten-year civil war to basically observe the peace agreement and related accords with only very light international monitoring.

One main reason for this success was that both armies recognized they had reached a mutually hurting stalemate. The conflict had become more of a coordination than a cooperation “game”, in Michael Doyle’s terms.<sup>130</sup> Still, even in cooperation games there are plenty of incentives to cheat. In fact, the Nepalese parties cheated on other aspects of the agreement relating to the strength of their armies, as we shall see below. But at the critical juncture between the signing of the peace agreement and the elections, they kept the peace despite a light and non-intrusive international monitoring regime. An important factor, according to General Jan Erik Wilhelmsen, the chief UN official who helped construct and manage this regime in the field, was precisely its light and non-intrusive aspects. The AMO structure he promoted was based on his experience in other light observer missions, and centered on the principle of national ownership. Representatives of the two Nepalese armies had participated in the drafting of the AMMAA agreement negotiated by the political leadership – the UN provided only technical expertise. Both armies were represented on the high-level tripartite Commission that had ultimate responsibility for solving conflicts related to the monitoring, and both were represented on the field level in the joint village patrols. The result, according to Wilhelmsen, was a structure that created channels of communications, joint responsibility, mutual confidence, and therefore incentives to make the structure work.

The high-level tripartite Commission gradually developed into an agency that could be used to consolidate the peace rather than serving partisan interests. The most striking evidence of its value in this regard occurred on the eve of the elections in April 2008. The Maoists had kidnapped and detained two off-duty Nepal Army soldiers, and the Chief of Army Staff, General Katawal, was livid. He ordered a Special Forces unit to prepare to surround the Maoist Headquarters in Kathmandu and, if necessary, to send a detachment to free the two men. If carried out, the move would likely have derailed the elections and could well have reignited the civil war. The Nepal Army representative on the JMCC took it upon himself to alert the UN chairman of the Commission, who in turn contacted Ian Martin, who conveyed a message of urgent concern to the Prime Minister, G.P. Koirala. At the last minute, Koirala reined in the Army chief and the crisis was averted.<sup>131</sup> On a smaller scale at the field level, the Joint Monitoring Teams of Nepalese and Maoist soldiers plus an international observer helped to defuse local disputes and established communication channels that cut across institutional enemy lines in the best tradition of confidence- and peacebuilding practices.

The fact that the international contingent would be unarmed and operate in small teams of 10 scattered across a generally inaccessible countryside had made the military planners in UN headquarters initially oppose the plan, citing lack of force protection. Assessing the mission in retrospect, Wilhelmsen concluded that national ownership and the tripartite structure had served to provide force protection. The Nepalese parties had insisted on unarmed observers and faced up to the consequences. There were no security incidents directed against AMO personnel, which indicated both a strong commitment to the mission by the parties, as Wilhelmsen reported back to New York, and a capacity to control their forces. The absence

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<sup>129</sup> *Ibid.* Sec. 6.3.

<sup>130</sup> Doyle and Sambanis, *op.cit.*

<sup>131</sup> Interviews, Kathmandu, December 2008 and Oslo, March 2009.



of weapons, moreover, “prevented escalation of tension at any incident...forcing protagonists to back down in negotiation.”<sup>132</sup>

Despite these accomplishments, UNMIN came under severe criticism from the mainstream political parties and much of the press for not effectively monitoring the Maoist army. The initial row was over the registration and verification of Maoist soldiers in 2007, when AMO monitors worked with UNDP and UNICEF. Between the first and second phase registration in the PLA camps, around 8600 persons simply slipped out and disappeared. Many had been recent recruits and would not qualify under the verification criteria for bona fide combatants; a spontaneous demobilization was probably a useful outcome in this case. Others may have joined the paramilitary Yong Communist League that was operating freely. Given the limited UN presence that the Nepalese had permitted, and the widely scattered location of the camps in the cantonment sites, the UN monitors had no capacity to record, let alone prevent, such slippage and spontaneous demobilization. For the same reasons, the AMO were unable to prevent the PLA from taking the kidnapped businessman, Hari Ram Shrestha, inside a camp and killing him. Yet both incidents were used by the Nepali Congress and other parties that opposed the Maoists to attack UNMIN as being pro-Maoist.

The volume of criticism increased markedly a year later when the video-scandal broke in May 2009. A (genuine) video was released, showing Prachanda giving a speech to cantoned PLA soldiers where he boasted of having tricked the UN in the numbers game during the registration by a very large margin. The UN had initially registered 30 000 soldiers; while the PLA in fact had only 7-8000 soldiers, Prachanda said. The speech had been made more than a year earlier in the midst of the election campaign, and Prachanda later excused himself to the new head of UNMIN, Karin Landgren, saying it was a difficult time in the peace process and the speech had been “necessary to boost... morale”.<sup>133</sup> Yet the Maoists undoubtedly padded the camp figures. While cantoned, the soldiers were being paid and trained. A larger force would increase these benefits and be a useful bargaining chip in future negotiations on demobilization and reintegration as well. There was, however, little the UN could do in the matter. The Nepalese parties had defined the criteria for registration of Maoist soldiers in the AMMAA agreement, and the basis criterion for registration was the possession of a Maoist identity card. On this basis the UN initially registered 30 000 soldiers, the number was later reduced to around 19000 after “slippage” and further reductions according to other criteria formulated by the Nepalese parties in the AMMAA regarding age and date of joining.<sup>134</sup> The discrepancy between an initial count of 30 000 soldiers and 3500 weapons suggests the number of soldiers was inflated and/or that at least some arms were stashed away. On the other hand, the Maoists had an unconventional military force and before an attack often sent in unarmed militias who beat drums and used loudspeakers to unnerve the enemy; the tactic seemed particularly effective when storming police posts.

Nevertheless, the controversy over UNMIN’s role in the registration process once again underlined the political vulnerability of the mission. The Nepalese “have felt let down by UNMIN,” wrote the new mainstream publication *Republica*.<sup>135</sup> The Nepali Congress bluntly demanded that the UN go back and do a re-count. Quite apart from the merits of the case, this was a golden opportunity for the mainstream parties to attack the Maoists and question the size of the PLA army as the basis for negotiations over its future disposition and integration

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<sup>132</sup> Wilhelmsen, *op.cit.* Sec 7.4.

<sup>133</sup> Navin Singh Khadka, “UN mired in deepening Nepal row”, BBC, 16 May 2009. [http://news.bbc.co.uk/2/hi/south\\_asia/8047931.stm](http://news.bbc.co.uk/2/hi/south_asia/8047931.stm)

<sup>134</sup> With slippage and exclusion of minors and persons who had joined after the cease-fire date (see note 93 on verification criteria), the number of bona fide combatants was reduced to around 19 000.

<sup>135</sup> 10 May 2009. [www.myrepublica.com](http://www.myrepublica.com)



with the Nepal Army. Since the UN had been central in the verification process, UNMIN was targeted for criticism, and the timing made critics intensify the attack.

The relationships between the Maoists-led government and the Nepal Army had by now deteriorated markedly, climaxing on April 4 when Prime Minister Prachanda sacked the Army Chief of Staff, General Katawal. The issue of integration of PLA members in the Nepal Army was at the heart of the conflict. Katawal fought back, however, and as he mobilized the army leadership, hinted a coup was in the offing,<sup>136</sup> and openly received support from India, Prachanda decided to resign. The very next day, May 5, the video was released (by his opponents). The Nepali Congress soon found additional reasons to discredit the credibility of the UN. When briefing the Security Council on the evolving crisis between the Maoist-led government and the Army chief, UNMIN head Karin Landgren had said that Prachanda's decision to sack General Katawal 'reportedly' had secured the agreement of the Nepali Congress.<sup>137</sup> Whether correct or not, when the crisis resulted in Prachanda's resignation, Katawal's reinstatement with India's blessing, and the opposition parties getting ready to take over the government, the Nepali Congress made very clear where it stood. The party leadership totally denied having supported the removal of Katawal and demanded that UNMIN retract and apologize. The NC-friendly *Republica* wrote in an editorial:

If neutrality is the core principle of the UN, Landgren has recklessly violated it and has lost the trust and confidence of major stakeholders of the peace process. The UN headquarters should immediately recall Landgren and send someone else with a higher stature and integrity to redeem UN's plummeting image in Nepal in the light of the series of recent events, including the recent exposé of Dahal's video tape that showed how flawed the verification process was.<sup>138</sup>

The incident reveals again the instrumentalism in local attitudes towards the UN. The mission had become a convenient target in the political infighting over power and policies in the implementation of the peace agreement. Reasonable criticism could have been levied against UNMIN in the registration/verification process on the grounds that the UN had accepted a regulatory framework for monitoring that was too slack, providing too many loopholes to the parties and insufficient power to the UN. In other words, national ownership had produced less than optimal conditions for effective monitoring and conflict prevention. This point none of the Nepalese critics advanced, however.

## 6.2 Assisting the elections

Despite the limitations on the mission and the political brouhaha over the events in April and May, there is no question that UNMIN played a critical role in helping to bring the original conflict between the Maoists and the state from the military sphere and into the political arena. The stunning election victory of the Maoists confirmed that the original conflict had been transformed. The Maoists had reason to be confident that they could prevail through a political struggle. Even the conflict between the Army and the Maoists in early 2009 that

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<sup>136</sup> Akhilesh Upadhyay, "What put Maoists on backfoot," The Kathmandu Post, 24 April 2009. <http://www.asianewsnet.net/news.php?id=5405&sec=1>

<sup>137</sup> Briefing by Ms. Karin Landgren, Representative of the Secretary-General in Nepal to the Security Council on the request of Nepal for United Nations assistance in support of the peace process. 5 May 2009. [www.unmin.org.np](http://www.unmin.org.np). Landgren also said that the Maoist's coalition partner, the UML, was said to have supported the decision.

<sup>138</sup> 27 May 2009. [www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=5544&show\\_comments=true](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=5544&show_comments=true)

culminated in Prachanda's resignation was not read by any informed observers as signaling a return to civil war. With the Maoists holding almost 40 percent of the seats in the Constituent Assembly, the mainstream parties recognized that they could not be ignored in any future political deal.

The new Constituent Assembly was more inclusive of women, indigenous nationalities and traditionally marginalized castes than any previous assembly in Nepal's history. This was fundamentally a result of long-term social change and the political upheaval of the past decade. By unequivocally endorsing the principles of social and political inclusion, UNMIN could take a small share of the credit for this change as well, although the mission earned more criticism than praise for its efforts.

### 6.3 "A" for effort: mediation and army integration

There were plenty of items on the negative side of the ledger, however. The peace process had not prevented - and partly given rise to - secondary conflicts involving collective grievances of marginalized groups, as well as violence involving less organized or criminal activity. There was also continuous tension over the issue of the 2-armies and the looming constitutional struggle. In all these areas the UN mission tried but failed to influence developments in a direction consonant with sustainable peace.

The attempt to provide UN support for expanding the peace process to the emerging conflict in the Terai was decisively rebuffed by the mainstream Nepalese parties and India, as recounted above. Absent an invitation to mediate, or at the very least acceptance of UN access to the disaffected groups, there was little the UN could do. Indeed, this was the lesson of the UN's involvement in the original conflict between the Maoists and the state. The established parties had accepted UN involvement only when the local political dynamic made a solution appear likely and particular needs for UN services were identified.

A similar situation arose with respect to the 2-armies problem. The relevant principles and a procedure had been established in the peace agreement, the AMMAA and the Interim Constitution of 2007. Members of the PLA would be integrated in the security forces or return to civilian life, the Nepal Army would be democratized and a special political committee would be established to sort out the issues. Yet none of the agreements had substantive guidelines or figures and ceilings for integration. All the difficult issues were deferred, perhaps deliberately so, as the International Crisis Group concluded in February 2009 when the parties seemed further apart than ever.<sup>139</sup> Both had initially procrastinated to position themselves. The special committee was not established until October 2008 after much bickering, but was for three months boycotted by the Nepali Congress and as a result lacked quorum or at any rate political authority. Cast into opposition after the devastating election defeat earlier in the year, the Nepali Congress was fighting for its political life and appeared to embrace a spoiler role to discredit the Maoists. The Maoists, for their part, had been holding out for integration on favorable terms and in the meantime demonstrated their intransigence by refusing to discharge some 4000 soldiers from the cantonments who had been disqualified as *bona fide* combatants in the UN verification process.

At one level the disagreement on standards for integration reflected the different nature of the two armies and related institutional interests. The Nepal Army insisted that integration must follow standardized, formal criteria of education and training for allocation of rank. The PLA, on the other hand, was a political army built on the basis of political commitment,

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<sup>139</sup> *Nepal's Faltering Peace Process*. ICG, Asia Report No 163, 19 February 2009, pp. 13-20.

demonstrated leadership and field experience. Standard requirements would have placed most PLA members towards the low end of the hierarchy in the Nepal Army. The PLA leadership demanded recognition of combat experience and service - “respectful inclusion”, as a high-level party official said. “We are an army, not a collection of terrorists. We did not surrender; we negotiated an end to the war.”<sup>140</sup>

Behind the issue of standards was the principle of integration itself. It increasingly seemed that army leadership, above all the Chief of Army Staff, General Katawal, opposed integration in any form. The Army tended to view the PLA as consisting of political operatives who would de-professionalize the Nepal Army rather than soldiers. There was also deep mistrust. Katawal, it will be recalled, had not even wanted Maoists in Joint Monitoring Teams inside the Army compounds. Just before the elections, the Army was “itching to provoke a confrontation with the Maoists soldiers”, the well-informed journalist Rita Manchanda wrote.<sup>141</sup> There was suspicion that the Maoists had not abandoned their revolutionary objectives (a suspicion that public statements by hard-line party factions kept alive). In defiance of the peace agreement, the AMMAA and the principle of integration, Katawal prepared to fill vacancies in the Nepal Army with regular, non-Maoist recruits. He had done so in 2007, but when he resumed the recruitment process in late 2008 he was nominally under the authority of a Maoist-led government which ordered him to desist. While the other parties in the Maoist-led coalition were uncertain, Prime Minister Prachanda decided to go ahead and sack the army chief on grounds of insubordination.

UNMIN had tried to facilitate constructive discussion on the integration issue. Ian Martin had publicly urged the Special Political Committee to meet as the parties had formally and repeatedly agreed to in principle. UNMIN had also offered technical assistance to the talks, possibly through the established and well-functioning tripartite Commission (JMCC). All urgings and offers of assistance were in vain. Opposition from the Nepali Congress was one factor. Still in control of the party despite his advanced age and the spectacular election defeat, G.P. Koirala wanted to keep UNMIN out of the critically important issue on army integration. This view was shared more broadly, however. The matter was too sensitive and complicated for the UN to become involved in.

UNMIN had taken the position taken since 2007 to the effect that new recruitment was a violation of both the text and spirit of the peace agreement and the AMMAA. Army supporters, however, argued that there was a legal basis for new recruitment. In the highly charged partisan politics of Nepal, Martin’s reiteration of the UN position during the controversy between the Army Chief and Prachanda was seen as unwanted interference or worse. An article in *The Nepali Time* called Martin’s statement as “clear an espousal of the Maoist cause as is prudentially possible” that, if not a breach of protocol, violated “accepted norms of diplomatic decency”.<sup>142</sup> Again, no organized Nepali political group came to the UNMIN’s defense although international observers argued that it was perfectly correct for UNMIN to advise on the legality of activities directly related to agreements it had witnessed.<sup>143</sup>

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<sup>140</sup> Minister of Information and Communication, Krishna Bahadur Mahara. Interview with author, Kathmandu, December, 2008.

<sup>141</sup> EPW, 2008, *op.cit.* p.24.

<sup>142</sup> C.K. Lal, “It is Nepal’s army,” *Nepali Times*, 9 January 2009, cited in ICG, February 2009, *op.cit.*

<sup>143</sup> UNMIN had been a witness to the AMMAA and convenor of the JMCC. Unilateral “new” recruitment by the armies was prohibited by the AMMAA, and should have been reported to the JMCC. The Nepal Army argued that since the recruitment only filled existing vacancies, it only “new personnel” and not “new” recruitment. ICG, *op.cit.* p.20.

*The Nepali Times* article had been headlined “It is Nepal’s army”, the implication being that UNMIN should step aside. Yet India stepped right into the controversy to ensure an outcome in favor of the Nepal Army and its supporters. A leading Nepalese commentator summarized India’s role:

India did play an active role - first in telling the Maoists not to go ahead [and sack Katawal], then in encouraging the other parties to walk out of the alliance [the government coalition]; and in thinking of ways to prevent the implementation of the decision to sack General Katawal. But this should not have come as a surprise.... Delhi had made it clear innumerable times not only to the Maoists, but also to journalists and others, that they will not tolerate any messing around with the army structure. India had become increasingly suspicious of Maoist intentions, its efforts to cosy up with China, and this incident proved to be the breaking point. As a diplomat put it, "There is no point in pretending anymore. We hate each other's guts and the gloves are off."<sup>144</sup>

The Maoists had possibly engaged in crisis maximization. Facing pressure from the hardliners in the party, slow progress of reconstruction, few political or economic achievements to show for its time in office, and mounting violence in the countryside, the Prime Minister might have concluded it was easier to be in the opposition. Resigning over a conflict with the Army - and being able to show an Indian hand in his ousting - earned the Party points on a left-nationalist rating.<sup>145</sup> It was also a golden opportunity to repair internal divisions and consolidate the party.

The political crisis soon faded into politics as usual as the other parties negotiated the formation of a new coalition and debated whether the Maoists should be invited in or allowed to dominate the opposition in the Constituent Assembly. The crisis had real costs, however. The continued existence of two irreconcilable armies was incompatible with sustained peace. On the Maoist side, long-term cantonment undermined morale. Conditions in the camps were spartan, with outbreaks of disease. More ominously, cadres were reportedly leaving the cantonments to join militias in the Terai and the Young Communist League. This was not only in violation of the peace agreement and the AMMAA, but suggested a gradual disintegration of the PLA into armed groups that would exacerbate Nepal’s growing problem of post-war violence perpetrated by incoherent and undisciplined armed groups. The prospect had been noted already in 2007 by worried UNMIN officials who saw comprehensive social security reform as a top priority. Yet absent stronger political backing from the Security Council and India, UNMIN could not proactively offer to assist in this area.

The stand-off between the Army chief and the Maoist-led government raised the prospect of the Nepal Army moving towards an autonomous political role to protect its institutional and perceived national interests. The depth of antagonism towards the Maoists in the Army leadership is indicated by a description of a meeting of senior officers who reportedly were planning a coup after Prime Minister Prachanda had sacked General Katawal:

Yesterday [ 23 April], 25 generals were present at the meeting of Principal Staff Officers at the Army Headquarters. The agenda was a serious one: Maoists are in a larger mission than to eliminate Nepal Army. They were out to derail the peace process and destroy Nepali democracy. And something had to be done to stop that.<sup>146</sup>

<sup>144</sup> Prashant Jha, “What now?”, *Nepali Times*, 5 May 2009, <http://www.nepalitimes.com.np/2009/05/5/211>

<sup>145</sup> This is suggested by Prashant Jha, *op.cit.*

<sup>146</sup> Upadhyay, *op.cit.*

In a worse case scenario, the failure of army integration signaled new forms of violence brought on by a politicized national army and a disintegrating army of ex-rebels. Yet in a by now familiar dynamic, the crisis soon subsided with the help of some time and a political compromise. The new coalition government retired Katawal (on schedule), and chose as a new Army chief a general reputed to be less political, less tied to the Palace, and representing for the first time a traditionally marginalized group in this position.<sup>147</sup>

## 6.4 Technical assistance

### 6.4.1 *Under-age soldiers*

Both the Nepalese parties had agreed in the peace agreement

not to include or use children who are under 18 years old and below in the armed force. Children thus affected would be instantaneously rescued and necessary and suitable assistance would be provided for their rehabilitation (Art 7.6).

The provision was quite clear and was reiterated in the subsequent agreement on monitoring and management of arms and armies (AMMAA). More broadly, the provision was anchored in a growing body of international law to protect children and their rights in armed conflict. UN Security Council Resolution 1612 of July 2005 had been used as an early point of access by the UN system to monitor and report on the impact of the civil war on children in Nepal. In this connection, the PLA's use of child soldiers was highlighted, reasonably well known, and a point of repeated international censure.<sup>148</sup> It came as no great surprise that the UN registration and verification of the Maoist cantonments in 2007 identified some 3000 combatants as minors, i.e. under 18 years of age as of 25 May 2006 (the date before the cease-fire code of conduct was signed). The discharge of these minors, however, became a long, complicated and controversial process. The UN, the donor community and the non-Maoist political class in Nepal were aligned on one side; the Maoists were on the other.

Several UN agencies and offices were involved. UNMIN was concerned with matters of policy and principles, UNICEF had responsibility for technical assistance, and the New York-based Special Representative of the Secretary General for Children in Armed Conflict, Radhika Coomaraswamy, visited Nepal to lend the weight of her office to monitor the situation and find a solution. On the program level, however, the issue had stalled completely. UNICEF had in 2007 worked with the Ministry for Peace and Reconstruction to come up with a plan of action to demobilize and reintegrate the under-age PLA soldiers. The ministry was then controlled by the Nepali Congress and the Maoists, not surprisingly, were quite unresponsive. Yet the situation improved only marginally after the April 2008 elections when a Maoist became Minister for Peace and Reconstruction.

The Maoists and UNICEF were basically speaking two different languages. UNICEF approached the problem in a legal-technocratic perspective. If the UN were to assist, UN principles must apply, in particular the Paris Principles of 2007 dedicated to the rights of the

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<sup>147</sup> Lt. Gen Chhatra Man Singh Gurung is a Janajati. "First Army Chief from ethnic group," *Kantipur Report*. [www.kantipuronline.com/kolnews.php?nid=208523](http://www.kantipuronline.com/kolnews.php?nid=208523)

<sup>148</sup> A Working Group on Children and Armed Conflict established under the terms of Res. 1612 reported to the UN Secretary-General who forwarded the reports to the Security Council. The first report was issued in 2006 (S/2006/1007) and the second in April 2008 (S/2008/59).

children. It did not help that UNICEF's plan for demobilization and reintegration was modeled on UNICEF-assisted programs for child soldiers in West Africa. The premise was that the children had to be "returned to their community and to their families", and "freely choose" their plans for the future in a setting "completely removed from the military", according to the UNICEF program officer.<sup>149</sup>

The Maoists had a different perspective. At one level, the minors represented a source of income for the families concerned (cantonment soldiers received salaries). Given Nepal's high unemployment rate among young men, it was not an unimportant consideration. The disqualified combatants also represented a bargaining chip in negotiations with the UN or the government over other disputed issues (late salaries, poor camp conditions and security sector reform). More fundamentally, the PLA was a political army and the youngsters represented valuable political capital. By 2007-8, they might be in their late teens or even older. Some had joined voluntarily and with their families, or because family members had been killed or displaced. Some were clearly committed despite a young age. The noted Nepalese social scientist Deepak Thapa has described an encounter with a young, "very young" Maoist soldier, noting his "childlike wonder" but also "steely resolution [that] gave us a glimpse of the kind of motive force that has driven the 'people's war'".<sup>150</sup> Other children had been taken from schools or their families.<sup>151</sup> Either way, the Maoist leadership hesitated to let their young cadres go without maintaining some control and future influence. The Maoist Minister for Peace and Reconstruction, Janardan Sharma, had been one of the five regional commanders of the PLA, but by late 2008 he was working towards a compromise. He proposed to UNICEF a demobilization scheme where the under-age soldiers would retrain in a setting close to the camps. UNICEF refused.

A process of conflict resolution in slow motion was nevertheless discernible. Other offices in the UN system in Kathmandu recognized the inappropriateness of off-the-shelf programs. So did the Special Representative for Children in Armed Conflict. Speaking to a high-level international meeting, Radhika Coomaraswamy cited the case of Nepal to stress the need for context sensitivity.

"L", a young girl in Nepal.... had run away to join the Maoists because of domestic violence in the home by her stepfather. After the peace process began, she did not want to go back home to her family or to her community. As a soldier she had learnt leadership skills and had a measure of confidence. She knew that the patriarchal norms of a traditional society would rob her of those advantages....[W]hat do we do if children find traditional communities too oppressive and confining?<sup>152</sup> The Paris Principles give us clear guidance on reintegrating the vast majority of child soldiers but we must also deal with the children who fall between the cracks.

<sup>149</sup> Interview with author, Kathmandu, December 2008.

<sup>150</sup> Thapa, *op.cit.* pp. 3-4.

<sup>151</sup> UN figures suggest a rash of abductions just around the time of the cease-fire (1576 documented cases between October and December 2006), evidently to boost the camp figure. About one-third, however, returned home or were released' after a few days. *Report of the Secretary-General on the request of Nepal for UN assistance in support of its peace process*, S/2007/442, 18 July 2007, p. 4 and 7. A Human Rights Watch report describing Maoists techniques for recruiting children cited kidnapping, abducting pupils from schools, running propaganda campaigns to attract child 'volunteers', and in areas under their control, requiring each family to assign one child to the Party. <http://www.hrw.org/en/news/2007/01/30/nepal-maoists-should-release-child-soldiers>. Long-time observers of the war suggest the term 'abduction' gives a misleading impression. In "group abductions", the Maoist would take a class of school children to a camp for training/indoctrination for a week or so, and then let them go. Some would opt to stay voluntarily. The Maoists did a form of conscription in areas under their control, however.

<sup>152</sup> Statement to Paris Principles Meeting 26, September 2008 <http://www.un.org/children/conflict/english/26-sept-2008-paris-principles-meeting.html>

The Maoists appeared to recognize the strain of the situation, and there were reports in early 2009 that a solution was in the offing. The fall of the Maoist cabinet in May 2009 did not derail the process entirely. The new government, led by the mainstream communist party UML, announced in mid-July that it had decided to discharge the 4 008 disqualified combatants – including 2973 who were minors at the time of the UN verification process in 2007 – and who would be rehabilitated with the assistance of UNICEF and UNDP. The decision was of course meaningless without the cooperation of the Maoist commanders, who were in control of the camps. It was now revealed that Prachanda earlier had agreed “in principle” to the discharge, and a new round of negotiations started. The Maoists were still holding out for jobs in the security sector, particularly for those who were no longer minors, whether in the border security force, the army or private security companies.<sup>153</sup> For these persons, little rehabilitation assistance would be required.

#### 6.4.2 UNDP’s “core peacebuilding areas”

Having worked in Nepal since 1963, UNDP adjusted its activities to the demands of the post-war situation. The agency launched a program in “core peacebuilding areas” in 2007 that included assistance for recovery and reintegration of displaced persons, support to the constitutional process and electoral assistance. Chief among these was the constitutional support program.<sup>154</sup>

During the first phase, the agency made available an international constitutional expert to assist with the preparation of the Interim Constitution and the future work of the Constitutional Assembly. The Nepalese, however, did not eagerly solicit his advice.<sup>155</sup> The reaction probably reflected a measure of fatigue with international experts who were arriving to offer advice on peace and constitutional restructuring of the state. The Nepalese were asked to consider various models of federalism, including the Canadian, the Swiss, and the Indian version. The advice might seem gratuitous given the enormous complexities, divisions and sensitivities of Nepal’s social and political scene, as Nepalese commentators liked to point out. Advice designed to help the traditionally marginalized group, in particular, touched core political conflicts. Yet UNDP persisted. After the Constituent Assembly elections were finally held, almost a year after the original schedule, and with the Assembly working towards a tight deadline of producing a new constitution within 16 months, UNDP launched an ambitious and greatly expanded constitutional support program.

The program had two pillars: One was technical assistance to members of the Constituent Assembly, including the establishment of a resource centre and meeting place located at the Assembly grounds. A second and potentially more controversial activity was to facilitate contact between the people and the elected members; “to give voice to the people”, especially the marginalized groups, as a UN staff member put it.<sup>156</sup> To this end, UNDP planned to work on two levels. Nationally, it would organize conferences and thematic reports on issues or views of particular communities that would be submitted to the Constituent Assembly committees. On the local level, UNDP would work with non-governmental organizations to establish a vast, “constitution-building network” of 30 000 community groups, orchestrated by some 900 community workers and reinforced by radio programs, all designed to foster

<sup>153</sup> “ Maoists demand integration of disqualified PLA men also,” *Kantipur Report*, 17 July 2009, [www.kantipuronline.com/kolnews.php?nid=204786](http://www.kantipuronline.com/kolnews.php?nid=204786)

<sup>154</sup> *Support to Participatory Constitution Building in Nepal*, UNDP 2008 [www.undp.org/Crisis Prevention & Recovery – Programme — UNDP in Nepal.mht](http://www.undp.org/Crisis%20Prevention%20&%20Recovery%20-%20Programme%20-%20UNDP%20in%20Nepal.mht). downloaded February 2009.

<sup>155</sup> Whitfield, *op.cit.*, p.27.

<sup>156</sup> Interview, UNDP officials, Kathmandu, December 2009.

informed participation about constitutional rights, obligations and issues. To run the program, a staff of 35 would be hired at headquarters level.

In some respects, it was not an unusual program in the inventory of UN support to post-conflict peacebuilding processes. In view of Nepal's well-established political parties, highly developed civil society, it seemed a bit of an over-kill of the kind likely to alienate Nepal's political and intellectual classes. As for civil society, the Nepalese commonly distinguished between the NGO-cum-consultancy sector and the rest.<sup>157</sup> The 'genuine civil society', the writer and activist Shyam Shrestha noted, was led by people who spearheaded the Jana Andolan II in 2006 – doctors, lawyers, teachers, writers and journalists. Unless these groups were involved, the constitutional movement would not engage the people and would not work.<sup>158</sup> In this case, the main impact of the UNDP program would be to generate employment for Nepal's sizable NGO-cum-consultancy sector. Some skepticism was also noticeable among the political parties, including from a Madhesi party whose secretary-general noted that it was "the job of the political parties", not UNDP, to establish communication between the people and Constituent Assembly members.<sup>159</sup> Nor was the program developed in cooperation with the Ministry of Peace and Reconstruction, which by late 2008 was in the process of establishing local peace committees and assessing how they could be used in the constitutional process.<sup>160</sup> Formally designed to promote peace, reconciliation, the committees also served as an infrastructure for exercising political control. How the networks of UNDP and the Ministry would relate to each other, if at all, was unclear, and at the central level the two agencies were competing for the same pool of donor money designated for peacebuilding and constitutional support.

## 6.5 The watchdog

Ian Martin's attempt in late 2007 to secure a broader mandate to support the peace process had been blocked. Yet in his capacity as SRSB and head of a mission originally requested by the Nepalese to assist with "the entire peace process", Martin retained the possibly more important role of general watchdog.

The peace agreement was mostly formulated in non-specific terms. The subsequent AMMAA on the management of arms and armies likewise left major issues of integration unspecified. Implementing the agreements consequently required substantive negotiations on major issues where the parties held conflicting views or interests. It was a deeply political process; qualitatively different from implementation in a technical sense. To facilitate this process the parties had agreed to establish several commissions or committees, but few functioned satisfactorily if they were established at all. A pattern soon developed whereby additional commissions or committees were promised when new conflicts arose, or, more commonly, the parties reiterated their commitment to empower the commissions and committees they had previously agreed to in principle.

In December 2007, the Maoists and the Nepali Congress repaired a major crisis in their relationship by signing a 23-point agreement that included establishing 5 commissions and 2 committees to help implement the agreement, most of which had already been referenced in

<sup>157</sup> See Seira Tamang, "Civilising Civil Society: Donors and democratic space in Nepal" in *Himal. South Asia Magazine*, Vol. 16, No. 7, 2005, pp.14-24.

<sup>158</sup> Interview with author, Kathmandu, December 2008.

<sup>159</sup> Interview with author, Kathmandu, December 2008.

<sup>160</sup> Interview, Ministry of Peace and Reconstruction, Kathmandu, December 2008.



the agreement.<sup>161</sup> Two were related to human rights (Commission for the Investigation of the Disappeared, and a Truth and Reconciliation Commission), three would deal with specific reforms (a special committee on army integration, a state reconstruction commission, and a commission on land reform), one was to work on peacebuilding (a high level peace commission with counterparts on the local level) and one was a high-level committee with the general task of monitoring compliance with the peace agreement.

The peace agreement and the 23-point agreement were useful reference points for UN officials to monitor the pace of implementation, and as the principal watchdog Martin pursued the task relentlessly. His words carried weight by virtue of personal status, long tenure in Nepal, and formal rank. Nevertheless, his efforts were hampered by the absence of a national counterpart that was formally responsible for monitoring the implementation of the agreement. In Martin's own view, as he reflected on the mission towards the end of his term, this was what he needed most.<sup>162</sup> A high-level multiparty commission accountable and responsible for monitoring the implementation phase could have turned national ownership of the process into an effective tool for peacebuilding. Martin repeatedly called attention to this point, as did his successor, Karin Landgren.<sup>163</sup>

The Nepalese had agreed to establish such a mechanism as one of the seven commissions/committees, but it was never done. An interim committee (Peace and Conflict Management Committee) was formed instead, but with an unclear mandate, an interim status, and not constituted at the highest-level of authority; it soon faded into obscurity. Its fate reflected the deeply political nature of the monitoring task: a national commission could have been effective if the parties had agreed sufficiently to establish one, which they did not.

Deep disagreement on substantive issues of implementation surfaced in the procedural debates on specific committees and commissions. A draft bill to establish a Truth and Reconciliation Commission was proposed by the Nepali Congress-led interim government, but its lack of guarantees for independence provoked such a storm of protest that it was dropped. The Maoist-led government drafted a slightly less partisan bill in the fall of 2008, but against local and international protest decided to promulgate it as an ordinance instead of risk running it through the Parliament. Similarly, the Maoist government prepared to establish a commission on disappearances in late 2008, but decided to promulgate the enabling legislation as an ordinance in February 2009. The special committee on army integration, as we have seen, took a long time to even meet because the preliminary consensus was lacking. The Maoist government did establish a high-level commission to study land reform in December 2008 (an issue that UNMIN did not address) and a Ministry of State Reconstruction (to take the place of the commission promised in the 23-point agreement). The fate of the former was uncertain when the Maoists left the government in May 2009. Both the interim government and the Maoist government used the Ministry of Peace and Reconstruction to establish political controls over locally based peace commissions, and neither government launched a high-level peace commission.

Nevertheless, over time there was some movement towards establishing all but one of the promised commissions or committees and it is reasonable to assume that international monitoring and urgings did contribute. A general watchdog role of the kind exercised by an active SRSG is akin to an informal power broker, heavily dependent upon personal status and formal rank. This is particularly the case in a fragile peace process, characterized inter alia by

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<sup>161</sup> 23-point agreement by the Seven-Party Alliance. 23 December 2007. Unofficial translation. [www.unmin.org.np](http://www.unmin.org.np)

<sup>162</sup> Interview December 2009

<sup>163</sup> Landgren brief to the Security Council, *op.cit.* The ICG strongly endorsed this argument as well. February 2009 report, *op.cit.*

the absence of a national monitoring body, as in Nepal. Early downsizing of the mission weakened the watchdog role by assigning the successor a lower rank, breaking the continuity of leadership, and requiring the new head of mission to invest in building up personal networks and knowledge.

Having a specialized mandate, OHCHR monitored human rights issues related to peace agreement and more generally in relation to international human rights law. Not being integrated with UNMIN – and deliberately maintaining a distinction by having mostly blue, not white vehicles - the field mission’s human rights work proceeded somewhat apart from the more controversial political monitoring of UNMIN. Controversy surrounding the renewal of UNMIN mission every half year did not seem to affect OHCHR.

## 7. Conclusions

As the timing suggests, Nepal’s civil war was very much a local conflict. The Nepalese Maoists launched a ‘people’s war’ a few years after the global struggle between communism and capitalism had ended with the collapse of the Soviet Union and the capitalist transformation of China. As a result, the revolutionary struggle in the small kingdom wedged in between India and China unfolded without creating much international interest except for India. Although the Nepalese government linked up with the globalized U.S. ‘war on terror’ by branding the Maoists as terrorist, national factors remained the primary determinants of events as the conflict ran its course and ended with a comprehensive peace agreement in 2006. By this time, it was widely accepted inside Nepal and among international agencies concerned that the peace process was largely nationally owned. The claim was validated above all in early 2006 when massive demonstrations of ‘people’s power’ in favor of peace and democracy brought down the monarchy and removed the last obstacles in the peace negotiations. In view of this, it was perhaps not surprising that the UN peace operation to help implement the 2006 agreement would be a minimalist mission. It was a testimony to a high degree of national ownership, but also – and contrary to the narrative of “national ownership” – Indian concern to limit the role of the UN.

The mission thus had an unusually thin mandate. UNMIN had no peacekeepers, even the military observers had to be unarmed and in civilian attire, no international police contingent, and no mandate to mediate. The Nepalese and the Indians held on to these principles even when the peace process appeared to derail as the elections were postponed, new conflicts erupted and critical security sector reforms stalled. On the Nepalese side, one reason was the ideological value of national ownership and common opposition to UN assistance in other than technical matters. The intensely partisan nature of Nepalese politics and the deeply divided peacebuilding process also constrained the UN. All Nepalese parties viewed the UN instrumentally, and each was convinced that giving the UN more room would benefit the other. The lack of local neutral forces or institutions that could cushion the divisive nature of domestic politics thus affected UNMIN as well.

UNMIN nevertheless performed two critical peacebuilding functions. First, its role in monitoring the two armies in the transition period and assisting the elections was essential to move the conflict from the military to the politics arena. The presence of a credible and impartial third party was required to seal the bargain in the peace agreement that stipulated elections but permitted the rebels to maintain their army, while cantoning both armies in the transition period. By standard peacebuilding criteria, the sequence was wrong. Rebel armies should be demobilized *before* the elections to avoid the example etched into the collective

UN consciousness by Jonas Savimbi in Angola in 1992.<sup>164</sup> In Nepal, there was indeed some fear that the Maoists would return to the jungle if they lost badly in the elections. Afterwards, despite – or because – of the Maoist electoral victory, violence and mutual suspicion remained. By mid-2009, three years after the peace agreement, many suspected that the Maoists remained committed to the revolution. The political establishment of upper castes and classes had not been fundamentally weakened by the war. The Nepal Army was unreformed. Critical and difficult issues in the peace agreement were unresolved relating to constitutional restructuring of the state, integration of the two armies, and promises to include the traditionally marginalized groups. Yet it seems clear that the 2008 elections was a watershed in the conflict between the Maoists and the Nepalese state, and the UN mission was decisive in getting the conflict over the critical hump and firmly planted in the realm of political competition.

In this regard, the UN military monitors provided an element of the “security guarantee” that Walter has identified as critical to consolidate peace agreements that end civil wars.<sup>165</sup> The Nepalese case shows that this guarantee can come in many forms and, contrary to Stedman’s criticism, can have the intended effect even if it is not – as it rarely can be – an ironclad mechanism.<sup>166</sup> The 182 UN observers armed solely with a blue UN cap and dispersed in Nepal’s difficult terrain certainly could not prevent a return to violence if the parties were bent on this course. They could not even monitor the cantoned armies on a regular basis. Yet their very presence served as a trip wire and hence a deterrence against defections from the agreement. Moreover, the contingent had additional, innovative features. Representatives of the two armies patrolled together and served on a high-level commission to resolve conflict. The tripartite arrangement constituted an infrastructure for confidence building that had a documented effect in preventing renewed armed conflict between the two armies. Timing was also important. Unusually quick reaction in the UN and flexible financial support from key donors (particularly Norway) made it possible to field the AMO as soon as the peace agreement was soon.

A limited observer mission of this kind has greater chance of success if the belligerents have reached a mutually hurting stalemate, are relatively well organized, and are at least tactically committed to the peace agreement. In these conditions, a minimalist contingent can function effectively and avoid the well-know distortions and costs associated with a larger mission.<sup>167</sup> The point has a lessons-learned relevance for the UN Secretariat, particularly the DPKO which initially opposed the unorthodox and minimalist mission design.

The second and less recognized importance of UNMIN was the role of the SRSNG in monitoring the implementation of the agreement, keeping the parties’ feet to the fire, and providing regular reports to the UN system on the development of a process that otherwise received little international attention. Heads of UN peace operations customarily take on a watchdog function, whether specifically included in their mandate or not. Since most peacebuilding processes are conflictual – whether the peace agreement is quite general (as in Nepal’s case) or enormously specific in detailing the parties and their role (as in the Dayton Agreement for Bosnia) – there is a role for an impartial monitor of the implementation process. The concept of “censor” in the original Roman meaning of the terms captures its essence.<sup>168</sup> The task of a censor of peace agreements would be to uphold the morality of the peace agreement, so to speak, by monitoring adherence and calling on the parties to honor

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<sup>164</sup> Savimbi lost the elections but had retained his army and returned to war.

<sup>165</sup> Walter, op.cit. .

<sup>166</sup> Stedman, op.cit.

<sup>167</sup> Chiyuki Aoi et al., *Unintended Consequences of Peacekeeping Operations*, Tokyo: UNU press, 2007.

<sup>168</sup> The Roman censors were the highest magistrates in the realm. They were responsible for maintaining the census, some aspects of public finance and works, and for upholding public morality.

their commitments and obligations. The SRSG in Nepal tried to do this, but was limited by the absence of a national counterpart that could lend weight and legitimacy to the ‘censoring’ role. The Nepalese parties recognized in principle the importance of such a national mechanism and had repeatedly agreed to establish a high-level commission to monitor and facilitate the implementation of the peace agreement. Despite their commitment in principle, which was strongly reinforced by the SRSG and supportive international observers, the commission had by mid-2009 not materialized. Given the divisive and partisan nature of the peace implementation process, it was at any rate an open question if a commission would function effectively even if established in name.

How does the Nepal case fit with the academic literature that concludes in favor of intrusive, multidimensional peace missions? At first glance, the fit is poor insofar as much of this literature presumes that the target country is a ‘failed state’. Sometimes made explicitly, as in Krasner’s work on ‘shared sovereignty’, more often a ‘failed state’ is conflated with contemporary post-conflict situations in general.<sup>169</sup> Some quantitative literature fails to distinguish between types of post-war situations at all, yet produces policy recommendations for intrusive missions that would seem most appropriate for a thoroughly failed state (however defined).<sup>170</sup> Common to all is that the question of host country consent is ignored or taken for granted.

In taxonomic terms, the Nepal civil war is markedly different from the wars in the ‘failed states’ of West Africa and West Asia. The family resemblance is rather to the civil wars in Central America in the 1970s and 1980s. There are some similarities in the peace processes as well. UN peace operations in Central America did not have armed peacekeepers, and, while multidimensional, had strong national counterparts in both the state and civil society. Although the term was not yet in vogue, peacebuilding was not premised on a “failed state” but the existence of considerable national capacity. National capacity, of course, is not automatically or necessarily harnessed in service of the peace agreement. This leads to the question of what are good indicators of national capacity for peacebuilding, and what the Nepal case can contribute here.

One of the few attempts in the literature to address this issue and systematically examine the relationship between local capacity and international assistance to peacebuilding is the seminal work by Doyle and Sambanis.<sup>171</sup> Building on both quantitative and qualitative analysis, they start by distinguishing between easy and hard cases (hard cases have high death and displacement during the conflict, a large number of adversarial factions, and a strong ethnic element). Indicators for local capacity and international assistance are then defined, and held up against the degree of success in building peace (measured statistically by return to large-scale violence and ‘participatory democracy’). They find, first, that UN missions increases the chances of peace, and multidimensional missions provide most value-added, and, second, that international assistance can substitute for local capacity. These findings are not readily supported by the Nepal case.

On the easy-hard continuum, Nepal would probably be located somewhere towards the difficult end (relatively low death and displacement score during the conflict, but high on number of factions and high on ethnicity if that is taken to include caste). On the indicators for local capacity for peace, Nepal would rate very low. The Doyle and Sambanis indicators

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<sup>169</sup> Krasner, *op.cit.*

<sup>170</sup> See e.g. Collier, *op.cit.* and Fearon & Laitin, *op.cit.* The latter argue for long-term international military presence to both maintain order and save the host country expenditures for development.

<sup>171</sup> Their 2006 book, *op.cit.* is a refined version of the argument originally presented in “International Peacebuilding: A Theoretical and Quantitative Analysis, *American Political Science Review*. Vol. 94, No. 4 December 2000, pp. 779-801.

are purely economic, while the Nepal case demonstrates what other studies also have shown, namely that political and institutional capacity on both the state and civil society level can be high and independent of the level of economic growth and electricity consumption (which Doyle and Sambanis have chosen as indicators).<sup>172</sup> Political mobilization of people's power in particular was crucial in moving the peace process forward in 2006 and at the core of the Nepalese claim to national ownership. As for the outcome, we have seen that, contrary to the aggregate trends, a minimalist mission was sufficient to help transition the original conflict from the military to the political realm and UNMIN's election assistance helped meet the Doyle and Sambanis criteria for participatory democracy as well. Secondary conflicts and low-level violence did erupt, however, and to that extent confirms the thesis that peacebuilding associated with minimalist missions is fragile.<sup>173</sup>

More problematic is the central thesis in Doyle and Sambanis to the effect that international assistance can substitute for local capacity. The thesis makes no allowance for nationalist reactions, whether in response to genuinely distorting effects of foreign presence or the more intangible 'white vehicle syndrome'. In the Nepalese case such reactions were probably accentuated by a strong commitment to national ownership of the peace negotiations, yet nationalist reactions of this kind are familiar in all peace operations. These reactions limited UNMIN's political room for action, and, when backed by the Indian government for other reasons, blocked the possibility for increasing international assistance at a juncture when the peace process appeared to stall. This points to a second problematic aspect of the substitution thesis. International substitution for lack of local capacity cannot secure a local peace process unless national interests are given voice from the beginning. In other words, the internationals would need to promote national capacity rather than substituting for its absence from the very beginning.

The significance of India's role in the peace process is echoed in the literature that emphasizes the regional context, going back to Hampson's early work on this subject.<sup>174</sup> Nepal was not located in a 'bad neighborhood' in the sense that its neighbors backed rival domestic factions in a pattern of competitive interventions that is nearly certain to undermine peace, as demonstrated elsewhere from Cambodia to Afghanistan. The India government was the sole, if active and principal, external actor to exercise partisan influence. At one critical point, this benefitted the peace negotiations (when India abandoned support for the King). Subsequently, however, Indian constraint had the opposite effect, particularly in supporting the Army against an elected government, and more generally in blocking well-intended UN efforts to negotiate in secondary conflicts. The Indian position sheltered Nepal against the possibility of an intrusive UN role, but in part filled that space with Indian influence which constrained the development of genuine Nepalese national ownership.

In the 2009 report of the UN Secretary-General on peacebuilding, national ownership appears as axiomatically good because it is defined as the ownership of something positive ('the peace process'). A more critical understanding of the concept would allow for the potential of national ownership to derail a peace process as well as keeping it on track. The point emerges clearly from the Nepal case study. The narrative of national ownership was celebrated by both Nepalese and internationals, but the Nepalese at times slowed the implementation of the peace agreement almost to a halt, haggled over old issues and clashed over new ones, refused

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<sup>172</sup> A major work here is Adam Przeworski et al., *Democracy and Development*, Cambridge: Cambridge University Press, 2000.

<sup>173</sup> Doyle & Sambanis take absence of major violence in a 2-year period after UN withdrawal as a measure of success. Technically speaking that would place the Nepal in 2009 outside their framework since major downsizing did not take place until late 2008.

<sup>174</sup> Fen Osler Hampson, *Nurturing Peace. Why Peace Agreements Succeed or Fail*. Washington, D.C.: U.S. Institute of Peace, 1996.

collectively to address issues of impunity for past violence and failed to prevent renewed violence. The political process somehow still moved forward - the elections were finally held, the resignation of the first Maoist government was followed by parliamentary negotiations between a new coalition and a new opposition, and the confrontation between the Army and the Maoists over the attempted sacking of Army Chief was at least temporarily defused by the appointment of a new general more agreeable to all sides. While slow and tortuous, it started to look like politics as usual. Yet the undercurrent of continued violence was real. To the extent that the Nepalese ownership weakened the peace process, the result was not the prospect of renewed war between the Maoist and the state but various forms of 'post-conflict' violence: scattered, low-level violence arising from the legacy of the war, and organized violence arising from unfulfilled promises of the peace agreement to restructure the state in ways that would reduce social exclusion and open for full political inclusion.



## SUMMARY

In the annals of UN peace operations, the mission in Nepal (UNMIN) appears as an exceptional case. Most peace support operations today are multidimensional – covering the security sector, political transition, relief and economic recovery, statebuilding, and transitional justice – and target the underlying causes of conflict as well. Peacebuilding means ensuring that “exclusionary social, economic and political structures ... [are not] left untouched, perpetuated or strengthened,” UN Secretary-General Kofi Annan declared when he inaugurated the UN Peacebuilding Commission in 2006. The language seemed tailor-made for Nepal, where the UN established a peace mission after the end of a ten-year civil war. Yet the UN operation to help consolidate peace in Nepal was a ‘focused mission of short duration,’ a minimalist operation with a razor-thin mandate.

This paper explores why this was so, and what were the consequences for peacebuilding. Was a limited UN mission appropriate to the challenges of peacebuilding, or was the mission unduly restricted? Did a high degree of Nepali ‘national ownership’ consolidate or complicate the peace process?

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