

CHAPTER I

INTRODUCTION

1.1 Background of the Study

Nepal is situated in between India and China. China is located on the northern border, whereas all three sides are surrounded by India. India and China are the neighbors of Nepal and it has very good relations with both of the countries. There are so many fellow-feeling in so many items due to close and neighborly relations. At the same time there may have some issues, dialogues and debates in some extent because of closeness and interrelated with each other's. It is natural that sometimes there might have some issues and problems in between the close neighbors. And border issue is one of them.

Nepal and India share a unique relationship in the world and their friendship and cooperation characterized by open border, free and unhindered movement of people across the border, similar culture and traditions, deep-rooted people-to-people relationship. Nepal shares a border of over 1850 Kilometers to India on the East, West and South with five Indian States. The mountainous portion of the boundary lies in Sikkim, West Bengal in the East with Mechi River, where as the remaining boundary runs along the plains in the south and along the Mahakali River in the west with Uttar Pradesh, Uttarakhand and Bihar (Kansakar, 2012).

The open border has greatly facilitated to harmonize the relationship between the two countries and the people. Besides, this unregulated border is also responsible for the transnational threat that both nations are facing for a long time. The open border system is largely responsible for the illegal and criminal activities such as robbery, murder, kidnapping, smuggling of humans, goods, arms, ammunition, arts, artifacts and manuscript, trafficking of narcotic drugs, smuggling of counterfeit currency on both sides of the border(Kansakar, 2012). Many Indian states served as a safe heaven for many Maoist insurgent leaders and cadres during the period of insurgency best utilizing the open border (Sharma, 2013). Nepal's southern neighbor has been raising the issue about the open border being evolved into the most lucrative passage for the

flow of terrorist from one end to other (Kansakar 2012). Since 1998, Nepalese high profile Muslim leaders and business men, such as then minister Mirja Dilshad beg ,businessman Younus Ansari and many have been killed or attacked by the international criminal group (Chhota Rajan, Chhota Sakeel, Bablu Srivastav) based in India. All groups have used the open border to enter and flee from Nepal.

Though the nexus between international terrorist groups and Nepalese armed outfits have not been identified yet but the threat remains at the highest level due to the open and porous border. In this context this research paper has tried to find the state of Nepal- India open border, dynamics of open border and the ways to mitigate the problem caused by this existing border system which could be helpful for the policy makers to solve the problem. So far as the Indo-Nepal border demarcation is concerned, Nepal-India Joint Technical Level Boundary Committee is working for the last 21 years (since 15 November 1981). But the boundary business is not yet completed. There may be so many reasons the boundary business not to be completed in due time, though it has the target to complete it by 2003. However, this type of target had been fixed many times in the past as in 1993, 1998 and 2001. But the target was not materialized. The main reasons and issues of the boundary business with India is the border encroachments, disputes on certain segments, divergence of opinion on basic materials such as maps and old documents for demarcation, slackness in joint survey field teams and so on and so forth

1.2 Statement of the Problem

The Indo-Nepal border is an open border, which has facilitated close social, cultural, and economic exchanges and led to a special relationship between the two countries. However, in recent times, the increasing misuse of the borders by terrorists, political activists, anti-social elements etc. has led to the demand for the closure of the border from the Indian side. The paper posits that a closed border is not beneficial for both the countries as the social and political costs involved in such a border are immense. The open border has both positive and negative effect for both countries. However at this juncture of time the security threat perceived due to this open border is immense in nature which can also destabilize the bilateral relationship of two neighbors enjoying since the time immemorial. Leaders, bureaucrats, security forces and security experts from both countries seem well aware of the consequences of the current status of an open border. However efforts to regulate the open border are not

encouraging till this time and are more likely to hurt Nepal more in the future. In this context it is felt necessary to discern the following questions in this research:

-) What are the prospects and problems of open border?
-) What are the security challenges posed by Nepal – India open border to Nepal?

1.3 Objectives of the Study

This thesis paper aims to achieve the following objectives:

-) To know about the case of open border.
-) To identify and analyze the concerns of Nepal and India on the open border.
-) To identify and evaluate the prospect, problem and challenges of open border to Nepal.
-) To ascertain various ways to manage the border to ensure the security and stability in the region.

1.4 Research Methodology

1.4.1 Research

Research methodology is a way to solve the research problem systematically. The research methodology considers the logic behind the methods used in the context of research study and explains why particular method or technique is used. It also highlights about how the research problem has been defined, what data have been collected, what particular method has been adopted.

A research project may also be an expansion on past work in the field. To test the validity of instruments, procedures, or experiments, research may replicate elements of prior projects, or the project as a whole. The primary purposes of basic research are documentation, discovery, interpretation, or the research and development (R&D) of methods and systems for the advancement of human knowledge.

1.4.2 Justification of Research Area

After the selection of the study area, available literatures primarily secondary sources to include government official reports, unpublished report of various security agencies, professional reports, articles in newspaper and journals were reviewed.

I choose the topic Nepal- India boarder and its impaction national security to study the prospect, problem and challenges of open boarder to Nepal. In this research we study the security challenges posed by Nepal- India open boarder to Nepal.

1.4.3 Research Design

The aim of this research is to analyze and describe the state of Nepal India open boarder as well as its impact on national security so; the descriptive, analytical and qualitative method has been used to analyze the gathered information during the course of research to address the objective.

1.4.4 Nature and Sources of Data

The research paper is based on secondary sources. Government official reports, professional reports, articles in newspaper and journals were collected from an internet, different websites and previous research paper to conduct the research.

1.4.5 Data analysis and Presentation

The collected data from various sources were analyzed elaborately. For the study of the concerned subject, the researcher has taken a qualitative approach, and thus descriptive and analytical methods have been chosen.

1.5 Rationales of the Study

The Indo-Nepal borders an open border. People from both countries are free to enter each other's territory from any point on the border, while the movement of goods is allowed along 22 designated transit points. Both geographical compulsions and historical developments in the two countries have contributed to the evolution and sustenance of such an open border. The unrestricted movement of people across the border, over the centuries, has led to the development of well-entrenched socio-cultural linkages between the people of the two countries. These linkages have, in turn, facilitated greater economic interdependence and political ties. However, if on the one hand this open border provided a conducive atmosphere for the growth of better relations between India and Nepal, its misuse by smugglers, drugs and arms traffickers, terrorists and insurgents, petty criminals, etc. as well as residual points of dispute along the border have strained the relationship. These factors have also resulted in demands from some sections in both India and Nepal – especially concerned politicians, security establishments, and academia – for either

closing or tightly regulating the border. The governments of Nepal and India both have realized that the open and porous border between them is largely responsible for the current transnational security threat.

This study will of course be a valuable guideline to those whom are concern to know more about the open boarder of Nepal and India and its impact on country security and also to Government industrialist, manufacturer or marketer of the country. Similarly it would be a valuable reference to the scholar or researcher who is interested in conducting further research on the related topic.

1.6 Limitations of the Study

Population movement across the international boundary has even wider ramifications. Depending on of the migrants has not only the potential to threaten the identity of a nation, but fear is often expressed about their tendency to pose demographic threat by swamping the indigenous people in a small nation. An ethnically homogeneous nation is more likely to be repugnant to the immigrants who can be a threat to its ethnic identity. Moreover, the ideological orientation of the migrants may also be incompatible with that of the establishment in the host country. In multiethnic societies, immigrants having socio-cultural similarities with an ethnic group of the host country are more likely to be welcomed by that group, but opposed by other groups, who do not share such an affinity. Thus the dynamics of migration and its impact varies from group to group, and society to society. 'Perceived cultural affinity or its absence clearly plays a critical role in how various communities respond to population influx'. Conferring of citizenship rights also depends on whether the receiving country considers the migrants as potential citizens or not. The ethnic composition of the receiving society and its geographical size, the ethnic identity.

Though there are lots of aspects of open border of Nepal and India, due to the limitation of the time and resources the study only confined to the national security. The survey is conducted only through government official reports, professional reports, articles in newspaper and journals from an internet, and various websites. The time period to complete this survey is just two months.

1.7 Organization of the Study

The overall contents of the study are distributed into five chapters which are as follows:

-) Chapter I deals with the introduction of the study that includes statement of the problem, objectives of the study, rationales of the study, Research Methodology, limitations of the study and organization of the study.
-) Chapter II deals with the Review of the literatures and conceptual and theoretical framework.
-) Chapter III deals with the Case for Nepal - India open border, Problem, Prospects and challenges of an open border
-) Chapter IV deals with the security threat posed by open border to Nepal and Modalities of Border Management
-) Chapter V deals with the summary of the research findings and suggestions for the different approaches to overcome the security threats posed by Nepal – India open border.

CHAPTER II

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Nepal-India Border System

The uniqueness of Nepal-India open border is that millions of people go cross it every single day. Even herds of cattle and wild animals walk past this over 1,600 kilometers border. In effect, Nepal-India open border is a life line for those living on either side. However, academic and expert discourses of the capitals of both the countries discard the relevance and significant of Nepal-India open border. Although some unwanted incidents by certain miscreants cannot be rule out, people from both the sides generally maintain a tranquil surrounding as the masses move past the open border.

“None of the treaties between Nepal and India ever mention the procedures for the regulation of the Nepal-India border. The trade agreement has specified the agreed routes for mutual trade. But there is no agreement regarding movement of the people and the agreed routes for movement of people of both countries along the border. As for trade, there are 22 agreed transit and customs posts along the Nepal-India border. The concept of open border between Nepal and India has still remained an enigma. Besides, there are several sub-customs posts. It is alleged that it is possible to have illegal movement of people and goods in collaboration with personnel deputed in those posts. There is no denying the fact that it is not unusual from the practical point of view to have illegal smuggling of goods, trafficking of girls to brothels in Indian cities, trafficking in narcotic drugs, arms and ammunition and movement of criminals and terrorists. In principle, both Nepal and India have positively agreed to control such illegal activities along the border, but there is lack of an effective and practical approach. So far as smuggling from Nepal to India is concerned,” writes Vidya Bir Singh Kansakar, Professor and former Head, Central Department of Geography, in his paper *Nepal-India Open Border: Prospects, Problems and Challenges*, presented in a seminar organized by Friedrich Ebert Stiftung in 2001.

Joint Press Statement on Visit of the Nepalese PM Baburam Bhattarai to India released on October 23, 2011 published by the official site of ministry of foreign

affairs (<http://www.mofa.gov.np>) and online newspapers such as ekantipur.com, Nepal monitor. Both the countries agreed on the fact that this unregulated border is responsible for the common phenomenon of cross border criminal activities. For this they have realized the necessity of the effective and efficient management of the border. Both nation admitted the reality of open border but still it is not sure when will they establish the mechanism which can control the trans-border criminal activities. It is also very interesting to find the reason behind this delayed process.

India- Nepal Relations published by ministry of external affairs, India posted on the web site <http://www.mea.gov.in/Portal/ForeignRelation/Nepal-February-2012.pdf>. The ninth paragraph of this article highlights the mutual security concern of both nations on open border. Both sides have repeatedly assured each other at various levels that it wouldn't allow their single inch of land to be utilized against each other and India is more concerned about the establishment of legal framework to counter the threat posed by an open border. This article did try to explain various implications of an open border to both nations however it fell to spell out the problem particularly faced by the small nation like Nepal. Nepal is not only fighting with the consequences of an open border but also receiving many allegations from its neighbor which often says Nepal is most lucrative passage for the flow of terrorist to their land. Rather than blaming Nepal, India needs to put more effort to regulate the border which has more resources. This article could have given more emphasis on this matter.

Nepal-India agrees to find missing border pillars, enhance security written and posted by Gyanu Adhikari in the Indian daily newspaper THE HINDU on 03 June 2013. A press statement issued by Nepal at the end of the secretary level annual bilateral meetings held at Kathmandu over security and the open border states that the two nations agreed to repair the border pillars as well as building the capacity of Nepalese armed police force and India's Border security force to control the cross border crimes/ illegal activities. There was an offer put forward by the Indian side regarding the up gradation of international airport in Kathmandu to strengthen its security mechanism and also the technical and material support to strengthen the immigration set up along the border areas. This article also states about the Indian continuous pressure to Nepal to sign on the mutual legal assistance treaty and a revised extradition treaty. The then home secretary of Nepal Umesh Mainali said that there

has been a great deal of cooperation, coordination and intelligence sharing which is very important to secure the open border.

India's willingness to afford support for the enhancement of security mechanism of Nepal seems to have been motivated by the fact that it wants to put Nepal under its security umbrella. Till the time this intent remains predominant in the bilateral relation, this problem would remain where it is at this juncture.

Nepal Border and Regional Security Issues is an article written and posted by Kamala Sarup on 16 Nov 2005 who is an editor in chief of peace media. This article particularly gives an emphasis on the formation of a joint approach with commitment from either side to eliminate the illegal cross border activities. Mr. Sarup says Nepal's security depends heavily upon its relationship with India and the India-Nepal approach to solve the mutual political and military conflicts rest with the creation of a secure border area.

Nexus of open border with India Posted on January 11, 2011 by border Nepal. This article quotes various statements given by high profile personalities on the issue of the Indo- Nepal open border, its challenges and the way ahead.

Indian foreign secretary Nirupama Rao who says India shares an open border with Nepal and the issues of security co-operation on the open border, tackling common threats like arms smuggling and criminal elements that operate along the border, were matters of mutual concern. It has to safeguard peace, security and development with our own borders" (Rao, 2011). Indian Minister of State for Foreign Affairs Praneeet Kaur during the visit of a group of young MPs of Nepal at the invitation of Ministry of Foreign Affairs of India on 24 November 2010 says "It is the danger of anti-India elements exploiting the open border using Nepali soil to create security problems in India.

United States Country Report on Terrorism- 2009 states. "The large ungoverned space along the Nepal-India border exacerbates the vulnerability. As a result, extremist group could make Nepal as a transit, especially into India. The report has given an example that Laskar-e Tayyiba (LT) member Muhammad Omar Madni traveled through Nepal en-route to New Delhi in June 2010". This article has tried to portray the effect of open border to India only however it has largely neglected the problem being faced by Nepal for a long time. Border management is very important for the

security of these both neighbors so it can't be seen from the perspective of security of one side only. If we see it from the perspective of one side only then the problem will never be solved and both parties have to suffer. In this regard we need to visualize the cross-border security concern of both frontiers in an international perspective.

Puran Chaudhary, a resident of Kakarvitta (Nepal), is worried about the three days' closure of Nepal-India border for the elections going to be held in India. Chaudhary is not alone in expressing such worries. Vishow Majumdar, 32, from Naxalbadi India shares a similar feeling. Majumdar, who owns and operates a Tata Sumo, depends on the income from transporting Nepalese crossing the border for earning a living.

With the growing reports of misuse of the open border, the number of security personnel deployed on either side, keeping a greater vigilance, has been common. The extra vigil harms the interests of the people living in the border areas more often than those who could really be involved in illegal acts. Along with these people, herds of wild elephants cross the border, leaving from one place and going to another in India and Nepal. The passage of wild elephants used to be the dense forests from Brahmaputra valley of Upper Assam to Nepal's Kosi. The forests have been cleared in several places by the people for their settlement, inviting intensified conflict between man and wild animal.

Cooperation between the forest and wild life officials of the two countries are dragged in to avert the man-animal conflict. Unlike human beings who can change the road, elephants follow the same track for years. Although they work for two different governments; security agencies maintain a close cooperation between them to maintain the order. All work to contain unwanted activities that can disrupt the life of peoples living on both sides of the border and even the wild animals. However, their pattern of living is changing. The people living in the border areas are facing a lot of hassles from the security forces. As the academic and security related debates rent the air in the seminar halls of the capital of both the countries, the people living in the border areas face all the hassles.

Nepal-India border is unique in the world in the sense that people of both the countries can cross it from any point, despite the existence of border check posts at several locations. The number of check posts meant for carrying out bilateral trade is 22. However, only at six transit points out of them, the movement was permitted to

nationals of third countries, who require entry and exit visa to cross the border. It is not known how the system of free movement of people on either side of the border continued even after the delineation and demarcation of Nepal-India border after 1816. The security officials on both the sides claim that they are not going to restrict the local residents. Our priority is containing organized smuggling. Listen to the local people: the situation is different, as people living on either side of the border have piles of complaints to make.

Indian academician Pushpita Das writes in her article that there is the need to effectively manage the India-Nepal border. “The open border between India and Nepal not only addressed mutual security considerations but also fostered close socio-economic relations between the two countries. The unrestricted flow of people over the years has resulted in the dissemination of ideas, culture, and settlements of people in each other’s territory, thereby strengthening the bilateral social and cultural relations. The open border also has a favorable impact on two economies,” writes Das. “While it is true that the open border has facilitated terrorist and criminal activities that are adversely impacting national security, it is equally important to recognize that an open border has also helped India and Nepal to develop and deepen socio-cultural and economic relations.”

“Current open and unrestricted border system between Nepal and India has created so many adverse impacts and it has given rise to many problems. Cross-border crimes, criminal activities such as murder, theft, and rape cases have increased in both the countries due to the open border.”

In whatever terminologies the academicians and security experts may have to describe about Nepal-India open border, the open border has economically benefited the nationals inhabiting both sides of the border. The increasing urbanization and growth of towns in the Terai and along the border inside Nepal and India has resulted in large inflows of goods from Indian side into Nepal. The open border has provided employment to the people on both sides in the transport as well as other sectors.

These all statements are the clear testimony of the complexity of open border to both nations. This situation, if not addressed timely, could sever the bilateral relations which has been a unique in the world for a very long time. For the peace, security,

prosperity and maintenance of the bilateral relation to sustain for long, both nations must take an initiative immediately to regulate the Indo- Nepal porous border.

2.2 Historic Overview

Nepal-India border is unique in the world in the sense that people of both the countries can cross it from any point, despite the existence of border check posts at several locations. The number of check posts meant for carrying out bilateral trade is 22. However, only at six transit points out of them, the movement was permitted to nationals of third countries, who require entry and exit visa to cross the border. As the whole length of the border except police does not patrol the check posts or paramilitary or military forces of either country, illegal movement of goods and people is a common feature on both sides of the India-Nepal border. Before the signing of the Sugauli Treaty between Nepal and India and subsequent demarcation of the Nepal India boundary, there existed free and unrestricted movement of people of Nepal and India across the border. It was almost impossible to control and regulate the movement of people along more than 1400 kilometers long border. Nevertheless, the main thoroughfare existed for social relations, cultural exchanges (pilgrimages, festivities, fairs, etc.) and trade and commerce and they constituted the major road junctions and places for levying customs duties.

It is not known how the system of free movement of people on either side of the border continued even after the delineation and demarcation of Nepal-India border after 1816. Prior to the 1814 war, the movement of people of both countries was allowed, but they were not allowed to purchase land and settle in the Tarai. Nevertheless, Nepal has been the land of shelter for the refugees fleeing due to the fear from powerful enemies. The Lichhavis, the Mallas and the Shakyas who existed before the birth of Lord Buddha, took refuge in the Tarai and the Valleys of the Himalayas when their lands were usurped by Ajatasatru. Similarly, during the Muslim invasions of India, the Mallas and the Shahs are reported to have taken refuge in Nepal. The growing domination of India the British East India Company prompted the rulers of Nepal to restrict the movement of Indians into Nepal. Moreover, the Tarai could not be brought under cultivation through immigrants from India, because they were neither permitted to purchase land nor entitled to have tenancy rights. Thus the large tracts of the Tarai were covered by dense forests and infested with malaria. The cattle herders of adjoining Indian territories of Champaran and other districts

used to graze cattle annually for four months (October to January) by paying duty. Duty was levied on buffaloes and cows were exempted from the levy (Kirkpatrick, 1801:83). Similarly, the agreement on Dudhawa Range specially preserved the right of the Indian nationals to come to the hills for bankas (a type of grass) by paying revenue. Prior to 1789, the Nepal Government established bazaars on the border of Nepal and India for regulating trade and decided that trade could be conducted at these points only. This hampered the freedom of trade, as the British (Indian) merchants had to cross the border and enter into the Nepalese bazaars, and return with whatever they could not sell. Anyone entering Nepal, particularly the Kathmandu Valley and other places in the Tarai in general, prior to the restoration of Oudh Tarai to Nepal in 1860, had to get rahadani or visa from the district governor. This was relaxed during the festival of Shivaratri and after the festival the combing up operation was done to expel all those who had come to attend the festival. This system continued even after the installation of democracy in 1951 until the opening of the Tribhuvan Rajpath in late 1950.

British Government kept the Nepal-India border open primarily for two purposes. The first was to maintain unrestricted migration of the Nepalese hill people to India and to procure them for recruitment in the Indian army. Recruitment of the Nepalese in the British army was very difficult up to the period of Prime Minister Ranodip Singh, because the Government of Nepal was in principle against the recruitment of its people in a foreign army. The clandestine and secret operations adopted by the British to get Nepal hill people in the Indian army were disliked by the Nepalese government which took strong measures to discourage the practice. Some of the Gorkhas serving in the Indian army on their return home on leave were even put to death and the property of those serving the Indian army was confiscated (Mojumdar, 1973). Sensing the harassment meted to families of the Gorkhas in the Indian army by the Nepalese government and to make the recruitment easier, the British Government encouraged migration of the Gorkhas from Nepal with their families and established Gorkha settlements in the hills of India, such as Bhagsu, Bakloh, Almora, Darjeeling, Deharadun, Shillong, etc.(H.M.S.O, 1965:61) It was only during the period of Prime Minister Bir Shumsher that the Nepalese government freely allowed enlistment of Nepalese in the Indian army (Kansakar, 1982).

The second important factor for maintaining open border by the British was to have easy and free access of British and Indian manufactured goods into Nepal as well as to Tibet wherein Nepal was the only easy and accessible route from India before the discovery of Chumbi Valley route from Sikkim. Moreover, the British wanted to have secure and easy supply of raw materials from Nepal into India such as timber and forest produce, herbs and medicinal plants, hides and skins,

The large scale involvement of men from the hills of Nepal in the World War I led to the shortage of able-bodied youths, particularly the Magars and the Gurungs, resulting in drastic decline in agriculture activities and shortage of food grains in the hills. More than 200,000 Nepalese took part in the war with a casualty of 20,000 men or one in every 10. In recognition of this assistance the British government gave Nepal an annual gift of Rs. 100,000 in perpetuity and the amount was increased to Rs. 200,000 after World War II (Mansergh and Moon, 1976:62). Most of those who were retired and released from war duty after the war, instead of coming back to Nepal, stayed in India where they could get employment in police and para-military services, security services in factories, offices as well as domestic servants in Indian cities where they were in great demand for their honesty, loyalty and hard work. In recognition of the contribution of Nepal during World War I, the Treaty of Friendship between Great Britain and Nepal signed at Kathmandu on 21 December 1923 recognized Nepal as a sovereign independent country, and this treaty erased from the Nepalese mind the apprehension of invasion by the British. In order to meet the food grains need of the country and to resettle the landless, Prime Minister Chandra Shumsher initiated the development of the Terai. On the one hand, the clearing of the forests in the Terai provided agricultural lands and on the other hand, the sal tree that was felled provided much needed timber to be used as sleepers for the expansion of Indian railways. Due to the fear of malaria and unbearable heat of the Terai, the hill people were reluctant to move to the Terai and the programme rather benefited the immigrants from India. Moreover, development programmes of the Tarai during the period of Chandra Shumsher like railways linking Amlekhganj to Raxaul and Janakpur to Jayanagar, Chandra canal etc attracted more immigrants from India. Chandra Shumsher abolished slavery in 1926 and the emancipated slaves were resettled in Bicha Khori and which was named as Amlekhgunj, town of emancipation.

The freed slaves provided the labor for the construction of railway from Raxaul to Amlekhgunj.

2.3 Conceptual Framework

Security

The word 'Security' has covered a board area of global security and national security. There is no single universally accepted definition of national security. The variety of definitions provides an overview of the many usages of this concept. The concept still remains ambiguous, having originated from simpler definitions which initially emphasized the freedom from military threat and political coercion to later increase in sophistication and include other forms of non-military security as suited the circumstances of the time.

A typical dictionary definition, in this case from the Macmillan Dictionary (online version), defines the term as "the protection or the safety of a country's secrets and its citizens" emphasizing the overall security of a nation and a nation state. Walter Lippmann, in 1943, defined it in terms of war saying that "a nation has security when it does not have to sacrifice its legitimate interests to avoid war, and is able, if challenged, to maintain them by war". A later definition by Harold Lass well, a political scientist, in 1950, looks at national security from almost the same aspect, that of external coercion

The distinctive meaning of national security means freedom from foreign dictation.

Arnold Wolfers (1960), while recognizing the need to segregate the subjectivity of the conceptual idea from the objectivity, talks of threats to acquired values: "An ambiguous symbol meaning different things to different people. National security objectively means the absence of threats to acquired values and subjectively, the absence of fear that such values will be attacked."

The 1996 definition propagated by the National Defense College of India accretes the elements of national power. National security is an appropriate and aggressive blend of political resilience and maturity, human resources, economic structure and capacity, technological competence, industrial base and availability of natural resources and finally the military might.

Harold Brown, U.S. Secretary of Defense from 1977 to 1981 in the Carter administration, enlarged the definition of national security by including elements such as economic and environmental security. National security then is the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to preserve its nature, institution, and governance from disruption from outside; and to control its borders. National security is best described as a capacity to control those domestic and foreign conditions that the public opinion of a given community believes necessary to enjoy its own self-determination or autonomy, prosperity and wellbeing. The measurable state of the capability of a nation to overcome the multi-dimensional threats to the apparent well-being of its people and its survival as a nation-state at any given time, by balancing all instruments of state policy through governance, that can be indexed by computation, empirically or otherwise, and is extendable to global security by variables external to it.

Origin

The origin of the modern concept of "national security" as a philosophy of maintaining a stable nation state can be traced to the Peace of Westphalia, wherein the concept of a sovereign state, ruled by a sovereign, became the basis of a new international order of nation states. It was Thomas Hobbes in his 1651 work *Leviathan* who stated that citizens yield to a powerful sovereign who in turn promises an end to civil and religious war, and to bring forth a lasting peace, and give him the right to conduct policy, including wage war or negotiate for peace for the good of the "commonwealth", i.e., a mandate for national security. The Clausewitzian view of diplomacy and war being the instruments of furthering national cause, added to the view of national security being sought by nations by exercising self-interest at all times. This view came to be known as "classical realism" in international relations.

Immanuel Kant, in his 1795 essay "Perpetual Peace: A Philosophical Sketch" *Zumewigen Frieden* (de), proposed a system where nation-states and dominating national interests were replaced by an enlightened world order, a community of mankind where nation-states subsumed the national interests under the rule of the international law because of rational insight, common good and moral commitment. National security was achieved by this voluntary accession by the leadership to a

higher order than the nation-state, viz. "international security". Thus was born the "idealist" school of international relations.

As an academic concept, national security can be seen as a recent phenomenon which was first introduced in the United States after World War II, and has to some degree replaced other concepts that describe the struggle of states to overcome various external and internal threats. The term was used during discourse on war, for example, Walter Lippmann in 1943 criticized an unwillingness of political pundits to discuss "the foundations of national security" in a time of peace. However, the earliest mention of the term national security, can be traced to 1790 in Yale University in reference to its relation with domestic industries.

Elements of national security

As in the case of national power, the military aspect of security is an important, but not the sole, component of national security. To be truly secure, a nation needs other forms of security. Authorities differ in their choice of nation security elements. Besides the military aspect of security, the aspects of diplomacy or politics; society; environment; energy and natural resources; and economics are commonly listed. The elements of national security correlate closely to the concept of the elements of national power. Romm (1993) lists security from narcotic cartels, economic security, environmental security and energy security as the non-military elements of national security.

Military security

This is traditionally, the earliest recognized form of national security. Military security implies the capability of a nation to defend itself, and/or deter military aggression. Alternatively, military security implies the capability of a nation to enforce its policy choices by use of military force. The term "military security" is considered synonymous with "security" in much of its usage. A condition that results from the establishment and maintenance of protective measures that ensures a state of inviolability from hostile acts or influences.

Political security

The political aspect of security has been offered by Barry Buzan, Ole Waver, Jaap de Wilde as an important component of national security, Political security is about the stability of the social order. Closely allied to military security and societal security,

other components proposed in a framework for national security in their book "Security: a new framework for analysis", it specifically addresses threats to sovereignty. System referent objects are defined, such as nation-states, nations, transnational groups of political importance including tribes, minorities, some religious organizations, systems of states such as the European Union and the United Nations, besides others. Diplomacy, negotiation and other interactions form the means of interaction between the objects,

Economic security

Historically, conquest of nations has made conquerors rich through plunder, access to new resources and enlarged trade by controlling a conquered nations' economy. In today's complex system of international trade, characterized by multi-national agreements, mutual inter-dependence and availability of natural resources etc., the freedom to exercise choice of policies to develop a nation's economy in the manner desired, invites economic security. Economic security today forms, arguably, as important a part of national security as military security. The creation and protection of jobs that supply defense and non-defense needs are vital to national security. Third world countries are less secure due to lack of employment for their citizens.

Environmental security

Environmental security deals with environmental issues which threaten the national security of a nation in any manner. The scope and nature of environmental threats to national security and strategies to engage them are a subject of debate. While all environmental events are not considered significant of being categorized as threats, many transnational issues, both global and regional would affect national security

Transnational environmental problems that threaten a nation's security, in its broad defined sense. These include global environmental problems such as climate change due to global warming, deforestation and loss of biodiversity, etc.

Environmental or resource problems that threaten a nation's security, traditionally defined. These would be problems whose outcomes would result in conventional threats to national security as first or higher order outcomes. Such disputes could range from heightened tension or outright conflict due to disputes over water scarcity in the Middle East, to illegal immigration into the United States caused by the failure of agriculture in Mexico. The genocide in Rwanda, indirectly or partly caused by rise

in population and dwindling availability of farmland, is an example of the extremity of outcome arising from problems of environmental security.

Environmentally threatening outcomes of warfare, e.g. Romans destroyed the fields of Carthage by pouring salt over them; Saddam Hussein's burning of oil wells in the Gulf War; the use of Agent Orange by the UK in the Malayan Emergency and the USA in the Vietnam War for defoliating forests for military purposes.

Security of energy and natural resources

A resource has been defined as "...a support inventory... biotic or abiotic, renewable or expendable... for sustaining life at a heightened level of well-being."— Prabhakaran Paleri (2008)

Resources include water, sources of energy, land and minerals. Availability of adequate natural resources is important for a nation to develop its industry and economic power. Lack of resources is a serious challenge for Japan to overcome to increase its national power. In the Persian Gulf War of 1991, fought over economic issues, Iraq captured Kuwait in order to capture its oil wells, among other reasons. Water resources are subject to disputes between many nations, including the two nuclear powers, India and Pakistan. Nations attempt to attain energy and natural resource security by acquiring the needed resources by force, negotiation and commerce.

Cyber-security

Recently, cyber security began to be viewed as a pressing national security issue. Electronic information systems are vital for maintaining a national security of any state. Possible unauthorized access to the critical governmental infrastructures by state and non-state entities can create a serious threat and have a negative impact on political, economic and military security of a given nation.

In the United States, the Bush Administration in January 2008, initiated the Comprehensive National Cyber security Initiative (CNCI). It introduced a differentiated approach, such as: identifying existing and emerging cyber security threats, finding and plugging existing cyber vulnerabilities, and apprehending actors that trying to gain access to secure federal information systems. President Obama issued a declaration that the "cyber threat is one of the most serious economic and

national security challenges we face as a nation" and that "America's economic prosperity in the 21st century will depend on cyber security."

Empowerment of women

U.S. Secretary of State Hillary Rodham Clinton has said that "The countries that threaten regional and global peace are the very places where women and girls are deprived of dignity and opportunity". She has noted that countries where women are oppressed are places where the "rule of law and democracy are struggling to take root" and that when women's rights as equals in society are upheld, the society as a whole changes and improves, which in turn enhances stability in that society, which in turn contributes to global society.

2.4 Security Systems in Nepal

Achieving peace requires getting process right, monitoring mechanism, sincere implementation of understandings and agreements, appropriately dealing with past and ensuring transitional justice and rule of law, guarantying transitional security, holding free and fair elections, proper facilitation of disarming, demobilizing and reintegration and restructuring of security sector, providing peace dividends and implementing reconstruction. At present, Nepal is in the fragile transition to peace. This country has experienced severe armed conflict between the state and the Communist Party of Nepal (Maoist) hereinafter referred as CPN (M) for a decade. The major causes of the conflict were related to structural inequality, exclusion and discrimination (caste, class, gender, geographical), concentration and abuse of power, poverty and unemployment, failure of state governing system, and ideologies. The armed conflict not only took the lives of more than thirteen thousands people and caused damage of infrastructures worth of billions of rupees but also paved the path for transformation of a feudal, centralized, monarchical unitary state into a modern, inclusive, federal republican state. The 12-point understanding between the Seven Party Alliance (SPA) and CPN (M) (ICG 2005) and subsequent people's movement of April 2006 provided fundamental basis for ending armed conflict and restoring peace (ICG 2006)

Nepal's peace process is in fact widely praised for its fast and substantial progress. However, it has also criticized for its failure to deliver the promises made, not following due process and unable to deal with transitional security and resistance to

materialize security system restructuring (Upreti, 2008). Success of Nepal's peace process depends upon the right process, translation of the promises made into action and effective undertaking of the SSR (Upreti, 2008c). So far, leaders have shown willingness to make peace process successful but failed to internalize the need of widely expected inclusion of women and other stakeholders, recognizing the importance of process element and providing peace dividends to Nepalese people (Upreti, 2008a). Instead, they whole heartedly involved in power struggle and vested political interest.

Bhatt (2008) Nepal was formally declared a Federal republic by the first meeting of the constituent Assembly (CA) Wednesday night on 28th May 2008. The declaration has ended the 240-year rule of the Shah Dynasty. The Shah Kings had been reigned the country since king Prithvi Narayan Shah conquered the Kathmandu Valley in 1748. The dynasty crumbled the other day, transforming its 12th King Gyanendra to an ordinary citizen. The CA has also given the former king 15 days to vacate the Narayanhity Royal Palace. When the proposal for the republic was tabled at the first meeting of the CA, an overwhelming 560 CA members supported the proposal while only four votes went against it. In the 601-member CA, 2 members are yet to be nominated whereas two MPs were prevented from voting on legal grounds. With the fall of the Shah dynasty through a bloodless political movement, the base of feudalism has crumbled. No king will stage coups to overthrow elected governments as in 1960 and 2005. The historic declaration of 28th May has ushered in an era of political stability. Indeed, this is an era of democracy, and only people-elected representatives have the right to govern. By birth, no institution and individual can possess the right to rule. He or she must get popular votes to exercise such rights. Contrary to this, the kings were exercising the rights simply because they were born kings. The first CA meeting that began after paying a two-minute tribute to the martyrs has indeed fulfilled the dreams of all martyrs and the people. The Nepali people were raising voices for the Constituent Assembly right after the change of 1951, but it could not be realized due to the conspiracies of the kings. When the demand for the CA was getting weakened, the Maoists waged an armed insurgency with republic as their major demand in 1996. The seed of republic was truly sowed in the 12-point between the CPN (Maoists) and the then mainstream seven-party alliance brokered in New Delhi. The very agreement resulted in the success of the April Movement of 2006,

restoration of the parliament, drafting of the interim constitution, formation of the interim parliament and the present historic CA. The political parties have taken very cautious steps to materialize the dream of a republic. Now when the people are celebrating the people's victory, all the political parties should be committed to forging a consensus was said by Prime Minister Girija Prasad Koirala in his historic address to the historic meeting of the CA so that epochal changes, including the consolidation of democracy and human rights, in Nepal are possible to lead Nepal to a peaceful, prosperous status.

Due to above considerable changes in the political system the security situation is to be improved progressively comparing to recent periods where violence was reported in September 2007 (explosions on crowded places—many people injured) and still beginning of April 2008—before elections the explosions were reported. Before proclamation of the Republic end of May 2008 and during related festivities the public was celebrating on the streets of Kathmandu especially around the king's palace where the police had to establish order. Some people were injured but no larger extent of violence took place due to strong police forces and the “celebrating character” of the demonstrations in support of the newborn Republic on Nepal. The process of changes and complete political stabilization is thus ending and times of parliamentary democracy with president are beginning. On the other hand the concern about the economic situation and its consequences to the social stability is remaining. Nevertheless this is confirmed by shortage of fuel, gas and other essential supplies which is lasting for months and causing long rows of cars, motorbikes and people on the streets. The situation in June got even worse and the police had to establish order on some overcrowded pump stations (Bhatt, 2008).

An open border is a border that enables free movement of people between different jurisdictions with limited or no restrictions on movement. A border may be an open border due to intentional legislation allowing free movement of people across the border, or a border may be an open border due to lack of adequate enforcement or adequate supervision of the border. An example of the former is the Schengen Agreement between the European Free Trade Area and most member states of the European Union, a treaty which officially allows free movement with very few restrictions. An example of the latter has been the border between Bangladesh and

India, which is becoming controlled. The term "open borders" applies to the flow of people, goods and services.

Some of positive impact of Nepal India boarder with reference to national security are strengthens relationship, competitive market, rescue operation, easy access of people and so on and negative impact are kidnapping, murder, robbery, women trafficking, terrorism, drugs trafficking, unauthorized trade and migration and illegal imports of arms and ammunitions.

2.5 Research Gap

Nepal, due to its geopolitical strategic location, international powers are always keen to use Nepal as a playground. India has been raising an issue of the danger from anti-India elements exploiting the open border using Nepali soil to create security problems in India. Similarly Nepal also did criticize India's role in giving sanctuary to Nepalese insurgents in the past. Such claims and counter claims if escalates can even jeopardize the relationship between these two friendly nations. Hence the reformative management of the border and the enhancement of law enforcement agencies are urgent for both nations to counter the various threats posed by this open and porous border. Though there are many papers and article based on the border system ,security system adopted on the border and the positive and negative concerns of open border but In this paper, case of open border ,concern of Nepal India open border, prospects and problem of open border and security challenges posed by Nepal-India open border to Nepal has been brought out in detail and some recommendation to overcome the threat posed by open border

CHAPTER III

PROBLEM, PROSPECTS AND CHALLENGES OF AN OPEN BORDER

3.1 Case for Open Border

The Anglo-Nepal War of 1814 AD and the signing of peace treaty between Nepal and the British East India Company on December 8, 1816 resulted into the demarcation of Nepal-India border. This boundary treaty is shown in an Appendix “A”. Nepal India boundary lies in Sikkim State and Darjeeling district of West Bengal State in the east, while rest of the boundary runs along the plains in the south and along the Mahakali River in the west.

In spite of the existence of many border check posts at various locations, Nepal-India border is unique in the world as people of both nations can cross the border from any place. There are twenty two check posts designed for carrying out bilateral trade. Out of these twenty two check posts only six are permitted for the movement of people of third countries (Kansakar, 2013). These people require entry and exit visa for crossing the border. The details of these main trade and transit Points along the Indo-Nepal Border are shown in an appendix “B”.

It is exactly not known how the arrangement of unrestricted movement of people on both sides of the border sustained even after the demarcation of Nepal-India border after 1816 AD. Prior to the Nepal- Anglo war, the free movement of people of both countries was permitted, but there was the restrictions in purchasing land and settle in the Terai by the people of both sides (Kansakar, 2013).

It is very difficult to control and regulate the flow of people along this long border. Due to the existence of large border area and the lack of security apparatus to do the patrolling, unhindered movement of men and material has been a common feature on both sides of the border.

The British East India Company kept the border open mainly for two reasons. The first one was to maintain unrestricted movement of the Nepalese hill people to India

and to acquire them for recruitment in because recruitment of the Nepalese people in the British army was very difficult.

In principle the Government of Nepal at that time was against the recruitment of its citizens in a foreign army and it tried many things to stop or prevent such activities. The second significant aspect for continuing open border by the British was to have simple, easy and free access of their manufactured goods into Nepal and to Tibet in which Nepal was the only trouble-free and accessible route prior to the discovery of Chumbi Valley route through Sikkim. Furthermore, British wanted to have secure environment and easy trade of raw materials such as wood, herbs, medicinal plants, animal hides and skins from Nepal to India (Shrestha, 2006). Text of the Tripartite Agreement between the Government of the United Kingdom, the Government of Dominion of India and the Government of Nepal is shown in Appendix “C”

The historical ties between these two countries clarify the necessity of the Treaty of Peace and Friendship signed in 1950 between Nepal and India to provide an impetus to the socio-cultural relationship. Two clauses of the Treaty of Peace and Friendship signed in 1950 are significant and have produced much argument and misunderstanding (Pattanaik, 2000). Article VI of the Treaty states that each government undertakes, in token of good neighbourly friendship between India and Nepal, to give to the national of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and the grant of concessions and contract relating to such development. Article VII further states that, 'the government of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privilege in the matters of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature. It became a major turning point in the movement of Indians into Nepal and was further reinforced by the Nepal India open border (Kansakar, 2013). Text of the Treaty of Peace and Friendship, signed in Kathmandu on July 31, 1950 is shown in Appendix “D”.

None of the treaties between Nepal and India ever mentions the procedures for the regulation of the Nepal-India border. The trade agreement has specified the agreed routes for mutual trade. But there is no agreement regarding movement of the people and the agreed routes for movement of people of both countries along the border. As for trade, there are 22 agreed transit and customs posts along the Nepal-India border.

The concept of open border between Nepal and India has still remained an enigma. Besides, there are several sub-customs posts. It is alleged that it is possible to have illegal movement of people and goods in collaboration with personnel deputed in those posts. There is no denying the fact that it is not unusual from the practical point of view to have illegal smuggling of goods, trafficking of girls to brothels in Indian cities, trafficking in narcotic drugs, arms and ammunition and movement of criminals and terrorists. In principle, both Nepal and India have positively agreed to control such illegal activities along the border, but there is lack of an effective and practical approach. So far as smuggling from Nepal to India is concerned, Mr. Sriman Narayan, the former Indian ambassador to Nepal, had once described it as smuggling by the Indians, to the Indians and for the Indians because of the craze for foreign goods in India and the import of Chinese goods (Sriman Narayan, 1970: 84). Inder Malhotra, a noted Indian Journalist, has remarked, "Nepal's economic needs should be treated with maximum understanding and generosity even if India has to suffer losses here and there, provided no grave damage is done to the Indian economy. India's unwillingness to adopt such attitude has been due to the diversion of import and export between Nepal and India in which a particularly unsavory group of Indian businessmen in Nepal have been the main promoter as well as beneficiaries of the various rackets. If allowed unchecked, the activities of these ugly Indians may do incalculable damage to Indo-Nepal relations" (Malhotra, 1970:6). Since the start of Nepal's foreign trade with the third countries, Indian business and industrial entrepreneurs started pouring into Nepal to benefit from the provision of foreign trade, because of the high demand for foreign manufactured goods in India and restriction on the import of foreign goods from abroad as well as very high import duties.

Nepal became safe haven for the Indian business community to import foreign goods, which had a high demand in India, and to smuggle them to India. In the process of industrialization in Nepal, Indians came in the forefront for investment by taking advantage of facilities such as foreign exchange to import machinery and raw materials, excise and tax exemption and foreign exchange bonus for the export of goods manufactured in Nepal. But the government's attempt to develop industries received a setback, because most of the Indian industrialists indulged in misappropriation of foreign exchange by importing second grade machinery and

excessive raw materials to sell them in India. Recent incidents of the import of Indian carpets and garments into Nepal and their re-export to third country as Nepal's own products have rendered incalculable damage to the carpet and garment industries of Nepal. It will be no exaggeration to state that this is due to the existence of massive corruption in the government bureaucracy, ad hoc policies, rules and decisions based on them, and lack of monitoring and evaluation. Moreover, there is no denying the fact that customs on both sides of the border are involved in corrupt practices. Despite the provision of access to market India for a large number of Nepalese manufactured goods with reduction in customs tariff as agreed under the trade agreement between Nepal and India, the problem lies with the non-tariff barrier, such as harassment to the Nepalese exporters by customs personnel and police patrols on the ground that they have not received any directives from the central government, or the items have more foreign components than stipulated in the treaty, and so on. Nepal has been charged with dumping of Nepalese goods into India. As a result the extension of the trade treaty has not taken place. It is in the state of stalemate due to the demand of the Indian government that the provision of the quantum of foreign component included in Nepalese manufactured goods must be reduced. Despite the export of Nepalese manufactured goods as per the trade agreement, the trade deficit of Nepal with India has remained several times high and India has not shown any indication to reduce the trade deficit of Nepal with India. India has agreed to extend the present trade treaty for another three months only.

3.2 Implications to Nepal

There are many treaties made between Nepal and India but no one has mentioned about the procedures for regulating the Nepal-India border. Neither there is any agreement or treaty regarding movement of the citizen and the agreed routes for the flow of people of both nations along the border. The concept of open border between Nepal and India has still remained a puzzle. It is believed and alleged that it is possible to have illicit movement of goods and people in collaboration with the authorities responsible in those posts. The fact is that, this unregulated form of the international border is largely responsible for the illegal smuggling of goods, men, narcotic drugs, small arms and ammunition and even the movement of terrorists and other type of criminals. In principle, both nations have agreed to control such illicit

activities along the border, but lack efficient and practical approach to counter these unlawful activities.

3.3 Security Implications

The socio cultural and geographical proximity, historical attachment and concentration of immigrants within the territorial limits close to the border of their own country, increases their demands. In this point of view, it is almost very difficult to control the flow of ideas, thoughts, information, and weapons of small caliber, money (both fake and real) and drugs through the trans- state networks. With the advancement of information – technology, communication and transportation these trans-state networks are becoming more and more sophisticated. In this context the geographical proximity and porous open border has serious implications in terms of both social and security threat (Pattanaik, 2000).

The intrusion of other immigrant hostile to the third nation can pose a security threat if it establishes the transnational networks in order to carry out subversive activities through various intelligence activities in Nepal. The open border has also posed a demographic threat to a nation like Nepal which is relatively very small in size and population. Many Nepalese, believes that this unlawful migration of people from southern neighbor is bringing another nation. It undermines the concept of sovereignty and independence in politics and economy. Smuggling of daily consumption goods to lethal arms, ammunition, explosives, drugs are another significant issues which is confronted by both Nepal and India. The low tariff between Nepal and India and a common import and export tax with respect to the third country business did provide incentive for smuggling. So far as smuggling from Nepal to India is concerned, Mr. Sriman Narayan, the former Indian ambassador to Nepal, had once described it as smuggling by the Indians, to the Indians and for the Indians because of the craze for foreign goods in India and the import of Chinese goods (Kansakar, 2000)

3.4 Perspective on the Nepal – India Open Border

Generally there are two perspectives of looking at the open border, one focusing on personal, daily issues, the other give emphasis to national interests. This is relatively an analytical distinction in everyday and socio- political views, due to the reason that these both dimensions and perspectives are interdependent and are influencing one

another. The arguments of these different groups of people are moreover similar but referring to varied levels with different focuses. On both levels there are two antagonistic positions towards the Nepal – India open border; one is more concerned with the benefits of this existing border system, the other is concerned with the disadvantages of this system on the culture, politics, economy, security and for the independence or the nationality comes into first position.

3.5 Material and Symbolic Meanings of the Open Border

General populace uses the open border for their economic advantage. This border system gives these people an opportunity for the close access to big markets, to procure goods, wherever they are accessible or cheaper, whenever manpower is needed. However it also implicates the prospect for misuse, for example smuggling and trafficking. In the perspectives of the Open Border, on one hand it can symbolize friendship and kinship between two countries and on the other hand it can be perceived as a symbol for threat.

There is a tension between transcendence of the international border, by the flow of goods , people, socio- economic relations on the one hand and giving emphasis to the border in the name of national identity, integrity, sovereignty, and security. The border area presented itself as a complex field, in which meanings of identity, nation and the state become visible.

3.6 Threat vs. Benefit

There are many views at different levels, different communities and different political parties on open border, Nepal-India relations and the security perception. Many regard the open border as the symbol of friendship and cooperation between the two nations. It can enhance the close socio - economic relations in the local populace. At the same time some have perceived as a threat for their business, independence or sovereignty and security of the nation. The existence and contents of these conflicting understandings and views gives an impression of an internal division in Nepal and the significance of being original Nepalese. Border management has been the key issues for all party and the people for a long time. When we analyze the various perception of the general public and cadres of political parties then the existing system of open border has more negative impact then the benefit. The benefits and threat of this open border will be discussed below:

3.6.1 Benefits of an Open Border

If we see the history of two Nation then the past, there has been a sound relationship between Nepal and India and open border never used to be a problem. If we see the past open, border was a boon and it could be beneficial to both nations in this time also for the following reasons.

3.6.1.1 Free Access

People of one country can cross over the border without any restriction from any point, though 22 checkpoints exist at different places along the border. Nepal- India border gives the message of peace and mutual trust rather than hate, and restrictions. It is more towards freedom rather than binding a person within a confined political boundary.

3.6.1.2 Socio Cultural Ties

The arrangement of the open border system is unique in the world. It proved immensely beneficial to the people of the border areas. It has promoted their traditional ties in religious, cultural, social and economic fields. It fostered friendly relations, mutual understanding and cultural ties among the border inhabitants of both Nepal and India. Various similarities in ethnicity, language, food habits, dress and way of living of the people of border areas has promoted matrimonial relationships among border inhabitants. Each year thousands of marriages take place among the border inhabitants of the two countries, which has added warmth in their relations.

3.6.1.3 Employment Opportunity

Many peasants living across the border carry out trade of their domestic animals and other agricultural products at the local markets. These trades have been generating opportunities for an employment in the border areas for long time. Significantly, the presence of millions of people across the border areas in the neighboring Indian states provides a large prospect for the growth of trade and industries in the Nepalese border areas (Jha, 2006).

3.6.1.4 Others

Many people living across the border areas go to India to study in different disciplines such as arts, commerce, science, law, medicine and engineering. Often, the Nepalese go to Siliguri, Darjeeling, Madhubani, Darbhanga, Sitamadhi, Muzaffarpur,

Gorakhpur and other border towns of neighboring Indian states of Bengal, Bihar and Uttar Pradesh for study. This is so because educational institutions in India are of higher quality. Besides, the Nepalese students are provided national treatment in India as per the provision of the Treaty of Peace and Friendship of 1950 between Nepal and India(Jha, 2006,).

3.6.2 Threat Perception of Nepal

King Prithvi Narayan Shah described Nepal as “Yam between two boulders” realizing the vulnerability of Nepal's geo-strategic location that is landlocked between India and China and advocated the policy of friendship with both nations. Nepal’s policy to pursue equidistance between the two neighbors found expression in its concept of “Zone of Peace” in 1975. This perception still holds true for the Nepalese people.

3.6.3 India’s Security Concern

As Nepal is facing a serious challenge with the open border, India is also facing hardship for a long time since its independence. India thinks that anti Indians elements that include the criminals or the terrorists had been using Nepal India open border and even some parts of Nepal as a safe heaven. They plan, prepare and operate against India which includes sabotage and many terrorists’ activities. India had been claiming on each occasion when they were hit by the terrorist activities. India believes that during 1980s and 1990s the Kashmiri as well as the Sikh militants entered to India through Nepal as fences were constructed along the India – Pakistan border to prevent the infiltration. Few years back the leader of DHD-J, commander in chief Niranjan Hojai was caught by Nepal police from Buddha , Kathmandu and later handed to Indian authorities. Indian Airlines IC 814 was hijacked from Tribhuvan international airport, Kathmandu and taken to Kandahar, Afghanistan. Recently two high profile terrorists Mohammed Ahmed Sidibappa and Adul Karim Tunda were arrested from near the border area. There are differences in opinion as from where these terrorists were arrested but some claims that they were arrested from within Nepal and some claims that they were arrested from the border areas. These above mentioned incidents highlight the fact that terrorist and criminal groups are using Nepal’s territory and the border areas as a base because the open border with India allows them to enter and exit India with ease (Das, 2013). India has allowed former Kashmiri militants to return to Jammu and Kashmir via Nepal under the surrender and

rehabilitation policy because of the difficulties involved in accessing the designated routes along the India-Pakistan border. This shows that Indian side is very much confident that the anti Indian elements infiltrate to India through Nepal.

3.7 Counter Terrorism Efforts

The Nepalese security agencies had conducted a study and identified 18 types of crimes that are widespread along the India-Nepal border including human, arms and drugs trafficking, unauthorized trade, smuggling of counterfeit currency, kidnapping, robbery, and extortion. In this context Nepal Police have prepared and enforced a Cross-Border Crime Control Action Plan 2013 to curb trans-border crimes. But more needs to be done.

India has undertaken a number of measures in response to the deteriorating security situation along the India-Nepal border. For example, the establishment of the Sashastra Seema Bal (SSB) that has been further augmented by the construction of five supplementary Border Out Posts (BOPs) and installing the surveillance cameras along the Nepal– India border. The Sashastra Seema Bal has been given the authority to search and arrest under the Criminal Procedure Code. To facilitate the movement and patrolling of SSB, 1,377 km. of strategic roads are also being built along the border. In addition, at Rauxual and Jogbani integrated check posts(ICP) with state of art detection and screening devices are being constructed.

Over the years, the Indian government has passed a series of anti-terrorist bills. These include the Armed Forces Act, The terrorist Disruptive Activities Act (TADA), and the prevention of terrorist act (POTA). Pakistan has been at the core of the War on Terror, due to the extensive collaboration between Pakistani authorities and the United States to chase down Al Qaeda and the Taliban on Pakistani soil. From 2005 onwards, counter-terrorism legislations have been enacted to expand powers of arrest and detention by national authorities in Bangladesh. In Nepal, the terrorist and Disruptive Activities (Punishment and Control) Act which was enforced by His Majesty's Government of Nepal in 1998 was scrapped by the Nepal government on 11 June 2006 but we have a separate institutional and legal arrangement by implementing money laundry, organized crime, small arms and human / drugs trafficking act.

In recent years India has been trying to develop linkages along its regions bordering Nepal. A transport agreement was signed between Nepal and India in 2004 for the regulation of passenger vehicular traffic through five border crossing points, including Mahendranagar, Nepalgunj, Bhairahawa, Birgunj and Kakarbhitta. In order to connect the different border districts of Nepal with Indian cities like New Delhi, Kolkata, Patna and Varanasi. A provision was made for plying 53 buses on the agreed routes from each side (Jha,2006).

The fight against terrorism has been a key issue for the South Asian Association for Regional Co-operation (SAARC) for a few years now. The decision to set up an anti-terrorism mechanism was adopted in 2006 at the Non-Aligned Movement (NAM) Summit in Havana. SAARC leaders approved the SAARC Convention on Mutual Legal Assistance Treaty (MLAT) at the fifteenth SAARC summit in August 2008. SAARC recently published the final declaration from its 17th summit, held on Nov 10 to 11, 2011 in Maldives, which was also attended by Afghan leaders. At the summit, the regional body vowed to work together "to root out terrorism, taking into account its linkages with illegal trafficking in narcotic drugs, psychotropic substances and small arms and to make coordinated and concerted efforts to combat terrorism. "The SAARC Terrorist Offences Monitoring Desk (STOMD) has been established in Colombo to collate, analyze and disseminate information about the terrorist incident tactics, strategies and methods. Complementing the work of the STOMD are the Drug Offences Monitoring Desk (SDOMD) and an Expert Group on Networking among Police Authorities.

CHAPTER IV

SECURITY THREAT POSED BY OPEN BORDER TO NEPAL AND MODALITIES OF BORDER MANAGEMENT

4.1 General

Mostly security threats to Nepal are not the external threats at the moment. Though it can't be ruled out completely but the internal security threat is the major concern for Nepal which is being affected by the porous border. Hence proper management of this border system is extremely important for the national security. The border security situation is marked by; increasing state of cross-border terrorism, infiltration and ex-filtration of various armed elements, rise of non-State actors; nexus between narcotic drugs traffickers and small arms smugglers, illegal migration of people, movement of left-wing extremism are some of the potential security threats.

4.2 Serious Nature of Security Threats

There are generally eighteen types of crimes that are widespread along the India-Nepal border including human, arms and drugs trafficking, unauthorized trade, smuggling of counterfeit currency, kidnapping, robbery, and extortion. The Nepalese Home Ministry has found the crimes involving international gangs are related to terrorist acts such as bomb blasts, etc. To reduce the effect cross border crimes Nepal Police have prepared and enforced a Cross-Border Crime Control Action Plan 2013 to curb trans-border crimes.

4.2.1 Women Trafficking

Suman Paswan, the secretary of the NGO Dalit Mahila Jan Kalyan Sansthan, has claimed in the report of 2012 that nearly 80 per cent of the women and girls involved in the flesh trade in India hailed from Nepal. He said around 1.5 lakh Nepalese girls were lured to Indian on one pretext or the other every year and were finally handed over to different gangs every year. The open border makes the job of the traffickers easier. UNICEF reports that as many as 7,000 women and girls are trafficked out of Nepal to India every year, and around 200,000 are now working in Indian brothels. A

voluntary group has mapped around 1,268 unmanned routes along the Indo-Nepal border which facilitate human trafficking (Das, 2013).

These girls are forced into selling their bodies, often with physical torture, and whatever they are paid is taken by the brothel-owners. Such brothels and red-light areas based in Mumbai, Kolkata, Darbhanga, Betiya, Siligudi and other towns and cities of India. The poor, innocent girls are treated like animals or consumer goods, their bodies humiliated and souls injured. The result of this forced prostitution is that they have been infected with HIV/AIDS. One major factor causing this misery and misfortune of Nepalese girls is the open, unregulated, uncontrolled border between Nepal and India (Shrestha, 2006).

In India's red-light districts, the demand for Nepalese girls, especially virgins with fair skin and Mongolian features, continues to increase. It is impossible to say how many girls and women are employed in the sex industry in India because not only the women were employed by brothels in urban areas, but prostitution exists in every city and town in India and in many villages, and statistics vary enormously.

4.2.2 Arms and Drugs Trafficking

Transporting arms and explosives illegally comes under terrorist activities. Whenever terrorists cross over the border, they usually import and export illegal arms. That was done during the Maoist insurgency by the then CPN (Maoist). Best utilizing the unregulated border, Maoist transported these arms and explosives to Nepal. For example, the Nepal Police confiscated 1410 items of guillotine, 3300 items of detonators and 470 items of fuse wire, transported from India to the Nepalese territory of Kapilvastu which is just 12 km north from the border. Similarly huge quantity of explosives along with Nepalese terrorist was confiscated by the Indian security forces in many Indian cities which were being transported to Nepal.

Following the signing of the Comprehensive Peace Agreement between major parties in 2006A.D. the number of armed groups increased especially in Terai and eastern hills of Nepal (Bhattarai, 2010). With the increase of these armed groups the rates of the proliferation of small arms and improvised explosive devices have accelerated. Arms are easily entered to Nepal from the bordering cities of India such as Patna, Bihar, Rakshowl, Sitamadi, Motihari, Jogmani, Lakhnau, Gorakhpur and Bayalbas borders of Nepal. Such arms are imported by goods lorries from Nepal-India

Transits(Pyakurel,). The small arms costs Nepalese Rupees (NRs) one thousand to ten thousands in India and those arms are sold in Kathmandu at nineteen thousands to thirty thousands. It is estimated that there are 440,000 privately owned firearms, with roughly one-eighth (55,000) believed to be legally registered and the trend is higher in Terai districts (Small arms survey, 2013).

Often it is reported that narcotic drugs are transported into the Indian and Nepalese border from south and south East Asian nations, and then exported to western countries through the Nepalese land. The 1999 US annual report on narcotic drugs published on March 2000 AD, says that Nepal, though not a transit point, is doomed to drugs trafficking because of the open border as well as loopholes at the customs points (Shrestha, 1992).

Nepal police have arrested 250 individuals in the last two years, on charges of drug smuggling. Many Indian nationals, about 43 last year and 47 already this year are arrested on this charge. The recent case being the arrest of smugglers Bhola Patel and Raju Ahir Yadav, both from Bihar. Both were transporting heroin from Raxaul to Kathmandu in March, 2013(Koirala, 2013).

4.2.3 Unauthorized Trade

This unauthorized trade issue is the serious concern for Nepal. Nepal has witnessed negative export growth resulting to widening trade deficit. Several commercial goods, clothes and machinery have been found illegally imported from some points of the open border where there is no customs office and police post. It is found that the illegal import and unauthorized export have been carried out through the open border taking advantage of the weather, time and other situation (Jha, 2006).

Despite the growing presence of security forces along both sides of Nepal-India border, unauthorized trade is common almost all through the border points, including in the Kakarbhitta, Biratnager, Janakpur, Birgunj, Bhairahawa and Nepalgunj corridors. Often, the carriers involved in unauthorized trade load goods either on their heads or on bicycles while crossing over the border. The normal commission that the carriers get for this purpose is 10 per cent of the value of the goods (Jha, 2006).

Interestingly, nearly 55 per cent of the people along the Nepal-India border region conduct border trade for private consumption, 23 per cent for business purposes and the remaining 14 per cent for social functions. About 68 per cent of the border

inhabitants use authorized custom checkpoints for border trade, while the remaining one third go for trade through non-custom checkpoints. The total value of informal imports of agricultural products from India to Nepal through the Nepal-India border amounted to Rs. 55 billion in 2012.¹⁸ It is believed that the informal trade through the Nepal-India border is more than what takes place through formal channels (Jha, 2006).

4.2.4 Activities of Extremist, Insurgents and Revolutionary Groups

Nepal's open border system with India also provides scope for shelter to political leaders from one country to the other. Whenever there is any political upheaval in one country, people easily escape by crossing over the border. During the decade long insurgency in Nepal, leaders and cadres of UCPN (M) used the bordering state of India as their shelter. Similarly, several other Indian freedom fighters also took shelter in the Nepalese border region during the Quit India Movement (Jha, 2006).

4.2.5 Smuggling of Counterfeit Currency

Nepal- India border is largely unmarked, unguarded and highly porous, the people who live in these parts desperately poor and due to this Cross-border smuggling, naturally, is rampant. Everyday people simply cycle across the border with illegal goods, most of them essential supplies. Fake Indian currency notes are making its way across the border from Nepal to India. Birgunj, the biggest town in Nepal's Terai region is now a transit point for almost all the fake currency entering India (Shashikumar, 2012).

Superintendent of Police, Yogeshwar Rom Khami, Birgunj police headquarters said that they have confiscated more than 400,000 rupees and the people from both sides are involved in this. Indian and Nepalese law enforcement officials have confirmed that several hundred crores of fake currency passes through this border every year. Criminal gangs have been ferrying counterfeit Indian currency, Printed in Pakistan, Bangladesh, and lately in Thailand, the Rs. 500 and Rs. 1,000 notes are flown into Kathmandu airport by couriers, transported overland to Birgunj and then taken across the border by smugglers to distributors on the other side under the pretext of ferrying essential survival supplies (Sashikumar, 2008,).

Indian officials have long maintained that the racket is organized by Pakistani intelligence and has links to the Dubai-based underworld don, Dawood Ibrahim and his associates in Nepal. They say the intention is to fund terror and to subvert the

Indian economy, and use Kathmandu airport and the Indo-Nepal border because it is so easy to smuggle contraband through them (Sashikumar, 2008.).

India officials believe Nepal is the main transit point for most of the counterfeit currency entering India. They estimate that Rs 1 billion worth of fake Indian notes are injected into the Indian money circulation every month via Nepal. At the pace it is growing, there will be Rs 100 billion worth of fake currency in circulation in India in the next two years (Sashikumar, 2008.).

DIG Ramesh Shekhar Bajracharya, who was the Nepal Police in charge at Tribhuvan International airport, says that Kathmandu had become a transit point for criminals and counterfeit currency and says that open border with India has made the situation worst giving criminals and the rackets an easy access(Indianexpress,2009.).

Indian and Nepalese police have set up informal coordination mechanisms along the border. But still the problem is still not solved because the fake currency racket also fattens the purse of police and customs officials on both sides of the India-Nepal border (Koirala,2013.).

4.2.6 Kidnapping, Murder, Robbery, and Extortion

Rise of armed groups have a direct implication in the illegal trade of small arms facilitated by the porous border. Thus significant rise of armed violence has been observed in Nepal in overall and Terai and Eastern hills in specific (Republica, 2009). After signing the peace agreement between the major political parties, increase in numbers of armed related violence and criminal activities in Nepal are mostly influenced by finance. Young people in Terai region are being attracted to take arms to collect money. Perpetuators are attracting school and college young people only for money and physical goods like motorbikes, mobile using and other luxury things (Gautam, 2013). Carrying pistols and shot guns have become a fashion in the Terai districts (Pyakurel, 2013).

According to the government recorded data, there was a 163 percent increase in violent incidents (murder, attempted murder & rape) in the period 2006-2010; & on the Informal Sector Service Center's (INSEC) surveillance system on Small Arms & other Portable Lethal Weapons (SAPLW), which documents a rise in armed violence between 2010 & 2011 – from 485 incidents & 670 casualties to 702 incidents & 907 casualties (INSEC, 2012). The development of this situation can largely be attributed

to the effect of a decade long insurgency and the mushrooming of armed outfits post twelve points agreement and most importantly to the unregulated border.

Due to the uncontrolled movement along the border, the children of the rich people, businessmen, industrialists, politicians are kidnapped and cross the border and ask for huge ransom in return for the safe release. Many criminal groups which are operating in Uttar Pradesh and Bihar of India uses Nepal as a sanctuary from where they mastermind crimes such as car-theft, kidnappings, extortions, etc.(Adhikari, 2013,). According to the Nepal police an increasing number of Indian criminals are being arrested across the country, mainly in border areas. Police have already arrested 375 Indians this year, while the total arrests of the last fiscal year were 349. The arrests range from cases of theft, robbery and smuggling to heinous crimes such as murder and kidnapping. Majority of these arrestees were nabbed in from Terai districts (Adhikari, 2013). Central Investigation Bureau carried out a successful investigation into the murder of former lawmaker Sadrul Miya Haque in Rautahat, which confirmed the involvement of Indian criminals behind this murder. It says open Indo-Nepal border is to blame for the increasing number of crimes committed by Indian criminals as it is easier for them to enter Nepal and escape after committing crimes. Besides that, other reason could possibly be the easy availability of hired criminals in India.

Since 1998 Nepalese high profile Muslim leaders and business man, such as then minister Mirja Dilshad beg on June 29 1998, businessman Younus Ansari 10 Mar 2011, Jamim shah 07 Feb 2010, General secretary of Islamic Association Nepal, Fajjan Ahmed on 26 Sep 2011 and others have been killed or attacked by the international criminal group (Chhota Rajan, Chhota Sakeel, Bablu Srivastav) based in India. All groups have used this open border to enter and flee from Nepal(Humagain, Giri and Kharel, 2010).

On seven May 2013, members of Bihar, India's infamous 'Shutter Todwa' gang were arrested from Bouddha, Kathmandu. In the same month most wanted criminal of India, who was charged of multiple murders, Babloo Dubey alias Mithilesh Dubey, arrested from Kathmandu. On July 2012, Bijay Gupta, a hardware businessman in Balaju, Kathmandu, who also had a fake Nepali citizenship, hired three sharp shooters from Bihar, India to rob a jewellery shop. During the last two years Nepal police have arrested 35 Indians on kidnapping charges (Adhikari, 2013).

The Nepalese Maoist leaders and cadres resided in bordering states of India during the period of insurgency best utilizing the open border. This has been accepted by the Maoist supremo Pushpa Kamal Dahal to the Indian Authorities in the past (Muni, 2012).

4.2.7 Terrorism

The State department definition, which is included in the terrorism report annually, defines terrorism in terms of politically motivated attacks on non-combatant targets. The open border has made it easy for the terrorists to run their activities. One they carry out terrorist act they enter into the other country easily and take safe shelter.

No such evidence has been collected so far that any armed groups having close connection with the terrorist. The Maoist "revolution" in Nepal until recent past that used arson, bombing, assassination, kidnapping and the lot to further their political aims. Some 15,000 people were killed, more than this number injured, and an estimated 100,000 to 150,000 people were internally displaced as a result of the conflict. Although the revolution was contained within the geographical limits of Nepal, at one time, they were labeled as terrorists by the Nepalese, Indian, US, EU and many other governments. During this Maoist insurgency top Maoist leaders and many others had taken many Indian cities as their safe shelter and used border area for doing so. Another issue for the Indian side was the Maoist objective of forming a so-called red corridor from Nepal to Tamil Nadu. This red corridor running across many Indian states is being viewed with considerable apprehension by Indian policy-makers (Das, 2008).

On the other hand India has been blaming Nepal time and again for not adopting strict measures to stop the free movement of ISI agents from Nepalese soil which she claim ultimately these anti-Indian elements enters to India best utilizing the porous border. Further to this India today a daily Indian newspaper once claimed that in Nepal there are hundreds of Nepalese ranging from high profile leaders to ordinary citizen have been working as an ISI agent.

On 24 December 1999, an Indian Airlines, IC 814 which was carrying and travelling from Tribhuvan International Airport, Kathmandu, Nepal to Gandhi International Airport, Delhi, India was hijacked by Harkat-ul-Mujahideen, a Pakistan-based group . DHD-J commander in chief Niranjan hojai was arrested from Baudha, Kathmanu.

He had been residing there since long time back with his Nepalese wife and owned a home in the name of his wife. Lashkar-e-Taiba bomb-maker Abdul Karim Tunda and Yasin Bhatkal, a founder of the terrorist outfit Indian Mujahideen, were arrested on Indo-Nepal border (The Economic times,2013,). these activities force to make believe that something ill motive organization had been utilizing Nepal – India open border for their vested political interest.

A team of Nepalese experts recently studied the situation of crime in the border areas, following which a Cross-Border Crime Control Action Plan 2013 was prepared and enforced (The Economic times,2013). The study revealed that nexuses exist among underground armed outfits of Nepal, India and the international criminal groups. According to the action plan, records of criminal groups active in the border area will be maintained by stepping up coordination among all security bodies.

4.2.8 Impact of Open Border System

Every object has its two aspects as every coin bears two faces. And every item has its negative and positive impacts. Similarly, Nepal-India open border system has its negative and positive impacts for both the nations. But Nepal has experienced a large percentage of negative impacts in many cases, as compared to India. If we make an inventory, negative impact outnumber the positive one for Nepal. Followings are the impacts of open border system:

4.2.8.1 Positive Impact

As we make a list of positive impacts, it may be the followings:

-) **Easy access:** The most positive aspect of open border system is the easy movement of people of both the countries.
-) **Strengthens relationship:** People to people relation on the frontiers of both sides has been maintained and strengthened due to free movement of people on either side of the border.
-) **Rescue operation:** Prompt services have been offered and provided on either side during calamities and disasters.
-) **Health service:** When there is an epidemic, health services can be offered from both the sides.
-) **Instant supply of labour:** When there is a shortage of local labour in one side it can be supplied instantly from other side.

-) **Competitive Market:** There is always a competition between the businessmen of the cross-frontier towns to be benefited to the consumers..
-) **Prompt Supply of food grains and daily stuff:** Unrestricted border has made comfortable for the prompt supply of food grains and daily foodstuffs from either side of the territory, where there are shortages. Open border has economically benefited the inhabitants of both sides of the border from the sell and purchase of livestock products, vegetables and daily kitchen stuff in Hat Bazars (open-roof markets) taking place regularly in various days a week in different parts on either side.

4.2.8.2 Negative Impact

Current open and unrestricted border system between Nepal and India has created so many adverse impacts and it has emerged many problems. Some of the issues have been mentioned as follows:

Border Encroachment: Aggression of boundary line and encroachment on the Nepalese territory is the by-product of the open border system. People are free to cross the border without any restriction. Some of the inhabitants who reside in the frontier area do not hesitate to destroy and pull off the main boundary pillars.

- a. **Cross-border terrorism:** Open border has provided as safe passage to the terrorists. India has been blaming Nepal that Pakistani ISI agents are infiltrating into India via Nepalese territory. But it is the fact that Pakistanis must travel to India at first to come to Nepal, if they use the land route. Most recently Nepalese Maoist terrorists are creating havoc and they are making war with the Nepalese army men and policemen killing so many innocent local people, especially in the hill districts of Nepal. Those Maoist fighters who have been saved as casualties use to cross the borderline and they are taking shelter in the Indian settlements. The Indian policemen have arrested most recently five wounded Maoist casualties, who were under treatment in the private hospital at Lucknow. Besides, Lucknow Police officer D.B.Bakchhi arrested eight Nepalese Maoist terrorists (with one woman), including the leader Aakash Darlami (Nischal) and handed over them to the adjoined Nepal police post on the 8th of April 2002. Local inhabitants of India believe that Maoist terrorists are taking shelter at Kauwapur, Bishanpur,

Balarampur and Baharainch of India as they think safe and secure (Gorkhapatra Daily, 22 April '02). American Assistant Secretary of State Christina Rocca expressed her worries during her recent visit to India that the Nepalese Maoists are taking shelter in India. United States under its military assistance has proceeded to provide equivalent to 20 million dollars to control the Maoist terrorism in Nepal. (Gorkhapatra Daily, 25 April '02)

- b. Trafficking of girls:** More than five thousand Nepalese girls have been sold annually in the Indian brothels. U.N. Women Development Fund, UNICEF Nepal field office mentions that there are near about two hundred thousand Nepalese girls and women in total in India. They are as the consuming commodity in the red-light and prostitution areas of Bombay, Calcutta, Darbhanga, Betia, Siligurhi and some other cities of India.
- c. Illegal import of arms and ammunitions:** Various types of guns, fire arms, gun-powder, grenades and its raw-materials, used by the Maoist terrorists have been confiscated by the army men, especially in the western hill districts. These unregistered and unlicensed arms and ammunitions might have been transported illegally because of the weakness of unrestricted border.
- d. Smuggling of goods, material and machinery:** There is always a possibility to be transported market goods and merchandise through the illegal entry points of the border, where there is no custom or police post.
- e. Smuggle of archeological artifacts:** Archeological materials such as ancient bricks and materials of Lumbini area (birthplace of Lord Buddha) have been smuggled to Piprahawa of India. Because India is going to construct duplicate structures to draw attention of the world, saying as Buddha was born in India. They are trying to distort the historical facts due to lack of the controlled border system between two countries.
- f. Cross-border crime:** Criminal activities such as murder, theft, and rape cases have been increased on the frontier of both the countries due to open border.
- g. Kidnapping:** Kidnapping of businessmen and children of well to do family is due to unrestricted movement in the borderline.
- h. High jacking:** Indian aircraft IC 814 to Delhi was high jacked from Tribhuvan international airport on 24 December 2000. It was ultimately landed at Kandhar, Afghanistan and the aircraft with the passengers were stranded for complete one week. People realized that open border is the cause of high

jacking. It is to be noted that passport / identification card or controlled border system was introduced for the air passengers at Tribhuvan international airport Kathmandu and New Delhi Indiragandhi international airport after the Indian aircraft highjacking incident.

- i. Robbery and theft:** Two Indian motorcycle men looted Rs. 200,000 from the local money change counter at Malangwa of Sarlahi district in 5 February 2000. After snatching the money, they rushed and entered into Sonbarsha of Indian territory.
- j. Infiltration of Bhutanese refugees:** Nearly 100,000 Bhutanese refugees infiltrated into Nepalese territory five years ago via India. It was the cause and effect of open border between Nepal and India.
- k. Deforestation and exploitation of medicinal plants and herbs:** Smugglers have exploited Nepalese forest resources illegally due to open border.
- l. Peace and Security:** General people of Nepal are experiencing that peace and security in the nation is being weak due to free movement of people on either side of the frontier. Third country nationals, as similar face to the Nepalese and Indian may cross the border in the form of Indian / Nepalese national. It is creating problems to maintain peace and national security in both the nations.
- m. Migration:** Density of population in the adjoining districts of India is higher than in the frontier areas of Nepal. So some of the Indian people resembling with the Nepalese faces have migrated to Nepalese territory, being benefited by the unmanaged open border.

Trafficking of narcotic drugs, encroachment on the Nepalese culture and traditions, leakage in revenue collection, distribution of fake academic certificates, prevalence of anti-social activities, rape cases, construction of dams and embankment submerging the borderline are also the result of thorough passage from the uncontrolled and wanton border.

4.3 Modalities of Border Management Challenges

4.3.1 Border Management in General

Traditionally, border management used to be taken as a measure to protect the borders against national security threats, economy and public health, to prevent or stop cross-border criminal activities, unlawful entry and exit from the country.

In today's context, increasing trend of international trade, cultural and educational exchanges make the facilitation of lawful movement of persons and materials an important strategic goal of most countries in the world. Border services are hence forced to maintain a delicate balance between strict regulations and fully open borders.

In order to balance the both goals, border management has been defined as maintaining the secure border and facilitated movement of legitimate persons and goods or materials in an effective and efficient manner while crossing the international border. It is also to maintain secure borders to meet national legal requirements (Shrestha, 2013).

4.3.2 Types of Border Management System

There are generally three types of International Border Management system being practiced in the world, which are open border, regulated border and closed border.

4.3.2.1 Open Border

An open border is a system that enables free movement of people and goods between different jurisdictions with limited or no restrictions to movement. It is open either due to the consent of both parties to allow free movement of people across the border or it may be due to the lack of sufficient supervision and enforcement mechanism. It refers to a system where a traveler of one country can visit and move around in another country without any restriction: e.g. Nepal and India

4.3.2.2 Regulated border

It is an arrangement under which a traveler visitor from one country must produce travel documents to immigration officer, such as passport and visa for example in India and Bangladesh. This system makes sure that people can immigrate and emigrate, but only on regulated basis.

4.3.2.3 Closed border

It means a system whereby a ban is enforced on cross-border movement of all types: No traveler can cross the border and enter the neighboring country, no matter how valid travel documents she / he might have possessed. For example, North and South Korea, India-Pakistan had closed border from the very past. These borders normally have fences or walls in which any gates or border crossings are closed and if these

border gates are opened they generally only allow movement of people in exceptional circumstances. The most famous still-existing example of this type of border is the Demilitarized Zone between two Korea, India - Pakistan. The Berlin Wall can also be taken as a "closed border".

4.4 Best option for Nepal

Nepal and India both are facing the threat to security due to this open border. In this context integrated border management is very essential to solve the current conflict between these two neighbors. Whereby the facilitation of licit movement of people and goods through designated entry and exit point will be guaranteed by following some legal procedures. For instance under this arrangement a traveler must produce travel documents to immigration officer, such as passport, visa, National identity card etc.

4.5 Challenges for Border Management

4.5.1 Disputed Borders

One of the important problems in managing the border is their border disputes. Before the independence of India, there existed a system of regular survey and supervision of Nepal-India boundary jointly conducted by the officials of both countries every year to oversee and find out encroachment, if any, on the boundary, ill-defined boundary, missing and broken as well as displaced boundary pillars with the objective to fix and place them in their original position. Accordingly, while Nepal has been entrusted to look after the pillars having odd number, India looks after the pillars having even number. After the independence of India, no joint boundary survey has been conducted until the formation of a Joint Boundary Commission in 1981 with the composition of six boundary survey teams. Delay in the formation of a Joint Boundary Commission resulted in several boundary disputes, which remain unresolved, because the activities of the Commission are going on at a very slow pace. There is a provision for two meetings of the Joint Boundary Commission every year. Twenty years have been elapsed since the formation of the Commission in 1981 and accordingly, there should have been meetings up to 1999, but so far only twenty two meetings have been convened.

Boundary survey of almost all the districts bordering India has been completed except for Darchula, Dadeldhura and Kanchanpur as well as the border with Sikkim State of India. Moreover, there have been several cases of encroachment on and tampering with the boundary makers and damage, destruction and removal of boundary pillars in the areas already surveyed by the joint boundary teams. As a result, there exist several cases of boundary disputes with resulting claims and counter claims. There are reportedly disputed areas along the Nepal India border with a total of six along the rivers of Mahakali, the Narayani/ Gandak (Susta) and the Mechi and the other two are in Pasupatinagar and Thori. There are several areas along the Nepal-India border where no man's land has been encroached on both sides. The violated border area towards Nepal is shown in Appendix "E"

According to Mr. Buddhi Narayan Shrestha, the former Director General of the Department of Survey of Nepal, there are 54 disputed and encroached areas along the Nepal-India boundary and Kalapani and Susta are the major issues. It is commendable that JTLBC has completed 98 percent of the demarcation work with the establishment of border pillars. But 2 percent of the total work has been entangled for long and still remains the same (Shrestha, 2006, P4). However, All Nepal Free Students Union affiliated with the Nepal Communist Party (Marxist and Leninist) has indicated sixty one disputed areas along the Nepal-India boundary. Out of the twenty six(26) districts of Nepal that borders to India, twenty two (22) districts have problem regarding an encroachment .The remaining four districts have no boundary problem and these are Baitadi, Bara, Mahottari and Dhanusha districts. These areas continue to remain a source of conflict and pose an obstruction towards normalization of relations between Nepal and India. The map depicting the disputed border is shown in an appendix.

4.5.2 Porous Nature of Border

Nepal's border comprises a diversified variety terrain encompassing, plains, hills, and reverie areas. In general these borders are highly porous due to the geographic condition, and ethnic affiliation of people on both sides of the borders. Illegal migration, infiltration of anti-national elements, smuggling of small arms, explosives and narcotic drug trafficking and human smugglings are some of the serious problem.

Direct accessibility and the state of porous borders allow insurgents, criminals or terrorists tactical flexibility. Advancement in technology has enabled quick flow of

information, transfer of funds, linkage of insurgents with terrorist groups have changed the focus and meaning of border security. It is also worthwhile to mention that insurgents and subversive elements have used soft borders to enter Nepal and the several armed outfits in the terai districts and the eastern hills are continually using it.

The Nepal- India open and porous border is responsible for the illegal movement of people and goods a longstanding problem. In fact, the border is not fenced and not been monitored through the adequate border security forces which leaves an area under open territory. The geographic condition, demographic composition and the lack of adequate security forces of the border area make it conducive environment for the illegal elements or groups to sneak into both sides and also to get easily absorbed into the local people.

4.5.3 Refugee Problem

Nepal and Bhutan are separated by a wide stretch of Indian Territory, Darjeeling district of West Bengal State and Sikkim State and Bhutan and Indian have no open border. However, because of the open border between Nepal and India they could easily enter into Nepal via Indian Territory. In reality, the first place of asylum for the Bhutanese refugees is India. Under international convention, it is the responsibility of India to settle them in India by establishing refugee camps, but India drove them into, Nepal. Nearly 100,000 Bhutanese refugees were settled in the camps in Jhapa and Morang districts. Though they live in the closed camps with barbed wire fencing, their movements outside are not restricted, and they are also able to cross the barbed wire fencing easily. This has affected the natural, social and economic environment of the surrounding areas, because they are engaged in illegal cutting of trees in the government forests, are engaged in business and work as cheap labour thereby affecting the business and employment of the local community. It is alleged that a lot of Bhutanese refugees have been able to secure Nepalese citizenship through illegal means. It is not known when the Bhutanese refugee problem will be completely solved and starts another one.

4.5.4 Dense Population in the Border Areas

Density of populace in the border areas at some places is approximately 700-800 persons per sq. km on the Indian side and about 206 persons per sq km on the Nepal side. Such type of densely populated area complimented with a porous border poses

serious problems in identification and apprehension of criminals and other illegal elements that have the option to cross over to the other side to avoid arrest.

4.5.5 Unfenced Border

There is no fencing in a huge stretch of over 1500kms long border. By itself, the fencing is not a barrier. It can be effective only when it is vigorously patrolled and kept under surveillance round the clock. But in our context neither it is fenced nor effectively patrolled nor kept under strict surveillance which makes the favorable condition for the unlawful elements to conduct their activities with ease.

CHAPTER V

CONCLUSION AND SUGGESTIONS

5.1 Research Findings

- a. Nepali citizen's perception of open border varies with the community ranging from those who live nearby the border area, living in the hills or mountains and varied interest of political parties.
- b. The open border has greatly facilitated to harmonize the socio – cultural relationship between the two countries and its people, but this unmanaged or unregulated border is also responsible for the transnational threat that the both nations are facing for a long period.
- c. The open border system is largely responsible for the illegal and criminal activities such as robbery, murder, kidnapping, smuggling of humans, goods, arms, ammunition, arts, artifacts and manuscript, trafficking of narcotic drugs, smuggling of counterfeit currency on both sides of the border. Since 1980's the open border has evolved into the most lucrative passage for the flow of terrorist from one end to other. It has also served as the entry point for the illegal migration of nationals from both end.
- d. The presence of or a nexus between international terrorist groups and Nepalese armed outfits has not been identified yet but the threat always remains at the highest level due to the open and porous border. Similarly India is also very much concerned about its misuse by the anti-Indian elements to endanger her national security.
- e. Many hard-core criminals chased by the security forces of India, enters to Nepal through the porous open border and setup mafia gangs and criminal syndicates in order to carry out smuggling of drugs, fake currency, gold, arms, ammunition and explosives.
- f. Misuse of this border by the unlawful elements as well as remaining points of disagreement along the open border have strained the bilateral relationship. These above mentioned factors have forced both nations, their politicians; security forces and academia for either strictly regulate the border or close it.

It is an unfortunate situation that Nepal's border regions with India largely remain underdeveloped. Little efforts have been made by the government to develop infrastructures facilities along border areas such as road networks, telecommunications, health, education etc. This is most likely due to the reason that development of peripheral border areas with India had never been a main priority for the Nepalese government.

The closure of the border only may not solve the problem, but a strong government and cross- border cooperation and collaboration can prevent the unlawful activities which possesses the security threat to both nations.

g. Apart from insurgents, many hard-core criminals pursued by Indian security forces escape into Nepal through the open border. There they setup smuggling gangs and criminal syndicates and carry out smuggling of gold, drugs, fake currency, arms, and explosives.

5.2 Conclusion

The open border between India and Nepal not only have brought out the mutual security concerns but also fostered close socio-economic relations between the two countries. The unrestricted flow of people over the years has resulted in the dissemination of ideas, culture, and settlements of people in each other's territory thereby strengthening the bilateral social and cultural relations. The open border also has a favorable impact on two economies. An open border has also allowed many Nepalese citizens to find employment in India and Indians to open business ventures in Nepal. At the same, the open border has been misused by terrorists and criminals.

The extent of misuse of the open border by terrorists and criminals has led to a clamor in some quarters to rethink the rationale for keeping the border with Nepal open. While it is true that the open border has facilitated terrorist and criminal activities that are adversely impacting national security, it is equally important to recognize that an open border has also helped India and Nepal to develop and deepen socio-cultural and economic relations. Transforming the border from an 'open border' to a 'closed border' would severely damage these ties with disastrous consequences for the citizens and economies of both countries. It would therefore be prudent to keep the border open but manage it more effectively by strengthening security through

effective law enforcement, installing screening and detection devices at the check points, and enhancing intelligence networks.

Nepal and India has a long and traditional relation. It has naturally promoted social and cultural relationship among the general people of both the nations, through matrimonial relation as well. Nepalese boys are the son-in-laws of the Indian nationals. Similarly, Indian daughters have been the daughter-in-laws of the Nepalese, being Nepalese and Indian fathers as the father-in-laws each other. So the border demarcation issues and the problem of border management can be solved through from the level of the general people to the levels of intellectuals, diplomats and politicians, if they make lively interactions with each other's. They can highlight the issues, make convince to others by discussions. It can be made good understanding to solve the problem and issues, segment by segment grasping the difficulties of other side.

So far as the border management is concerned, open border system has created so many problems and it has affected in social and economic aspects for both Nepal and India. The most sensitive issues these days are the free movement of the terrorists and transportation of illegal arms and ammunitions across the open border. This is quite harmful for both the countries. An uncontrolled, unrestricted and opened border constitutes the breeding ground for terrorism, criminal, illegal and anti-social activities. Keeping in view the welfare and development of general people of both the nations, there is an urgent need to manage and regulate the free movement of people. It needs to check and stop transportation of smuggled goods across the unpatrolled open border. The time has been changed much from peacefulness to disturbing and troublesome. General people of both the countries are feeling panicky and fearfulness due to current circumstances in the South Asian region. It has to be made joint efforts to review the impact of open border system through dialogues and negotiations. It must come to the conclusion jointly to make the border restricted for the terrorist, controlled for smugglers, obstructed for the girl traffickers, checked for the criminals, stopped for narcotic holders but managed for the genuine passengers and regulated for legal export and import.

5.3 Suggestions

5.3.1 Border Guidelines

There should be an appropriate border guidelines designed for the security forces responsible for the guarding of border of both nations. The aim being to ensure co-operation between various stakeholders over cross border crimes, exchange of related information and intelligence at all levels.

5.3.2 Mutual Legal Actions against Terrorism

Terrorism has become a curse for almost all nations in South Asia and the victim nations are combating for themselves against the threat of terrorism. In this context it is essential for both nations must come to an agreement to make the international border safe and secure. Blaming each other will not solve the problem. Hence mutual legal action against the unlawful elements must be taken immediately to check the criminals, women's traffickers and narcotic drugs holders and the terrorists.

5.3.3 Fencing the Border and Enforcement of ID Cards

The terrorists, rebels and criminals have misused present porous border from the very long time and this Nepal– India border is likely to create instability in the domestic politics as well as can severe the bilateral relationship. Therefore, enforcement of ID card system and fencing the frontier should be an appropriate measure to make the border restricted for the terrorists, petty criminals, smugglers, drug traffickers and the human traffickers and so on. However it doesn't mean to stop the flow of general public from one end to other but it is to regulate them from a designated point. It will also help to manage for export and import of merchandise legally, so that life and property of people of both the frontiers would be safe and secure. Most importantly country would be able to collect the revenue, which would assist in the national development.

5.3.4 Establishment of a High Level Special Body for the Border Security

Nepal government should form a high level special body comprising various specialist to suggest the government in order to deal with various border security problem such as border encroachment, informal trade, women trafficking, illegal arms transaction, drug trafficking etc.

5.3.5 Review of Peace and Friendship Treaties and Pillars

The old and irrelevant treaties should be reviewed which will be favorable for both countries. Co-operation at various levels has to be made and implemented. The problem should be solved with bilateral discussion. "Das Gaja" system has to be well followed and the "Pillar" in between Nepal-India borders has to be made proper.

APPENDIX “A”

1st NOVEMBER 1860 BOUNDARY TREATY WITH NIPAL, 1ST NOVEMBER 1860

During the disturbances which followed the mutiny of the Native army of Bengal in 1857, the Maharajah of Nipal not only faithfully maintained the relations of peace and friendship established between the British Government and the State of Nipal by the Treaty of Segowlee, but freely placed troops at the disposal of the British authorities for the preservation of order in the Frontier Districts, and subsequently sent a force to co-operate with the British Army in the re-capture of Luck now and the final defeat of the rebels. On the conclusion of these operations, the Viceroy and Governor-General in recognition of the eminent services rendered to the British Government by the State of Nipal, declared his intention to restore to the Maharajah the whole of the lowlands lying between the River Kali and the District of Goruckpore, which belonged to the State of Nipal in 1815, and were ceded to the British Government in that year by the aforesaid treaty. These lands have now been identified by Commissioners appointed for the purpose by the British Government, in the presence of Commissioners deputed by the Nipal Darbar, masonry pillars have been erected to mark the future boundary of the two States, and the territory has been formally delivered over to the Nipalese Authorities. In order the more firmly to secure the State of Nipal in the perpetual possession of this territory, and to mark in a solemn way the occasion of its restoration, the following Treaty has been concluded between the two States:

Article 1st

All Treaties and Engagements now in force between the British Government and the Maharajah of Nipal, except in so far as they may be altered by this Treaty, are hereby confirmed.

Article 2nd

The British Government hereby bestows on the Maharajah of Nipal in full sovereignty, the whole of the lowlands between the Rivers Kali and Rapteree, and the whole of the lowlands lying between the River Rapteree and the District of Goruckpore, which were in the possession of the Nipal State in the year 1815, and were ceded to

the British Government by Article III of the Treaty concluded at Segowlee on the 2nd of December in that year.

Article 3rd

The boundary line surveyed by the British Commissioners appointed for the purpose extending eastward from the River Kali or Sarada to the foot of the hills north of Bagowra Tal, and marked by the pillars, shall henceforth be the boundary between the British Province of Oudha and the Territories of the Maharajah of Nipal.

This Treaty, signed by Lieutenant-Colonel George Ramsay, on the part of His Excellency the Right Honourable Charles John, Earl Canning, G.C.B., Viceroy and Governor-General of India, and by Maharajah Jung Bahadoor Rana, G.C.B., on the part of Maharajah Dheraj Soorinder Vikram Shah Bahadoor Shumshere Jung, shall be ratified, and the ratification shall be exchanged at Khatmandoo within thirty days of the date of signature.

Signed and sealed at Khatmandoo, this First day of November, A.D., one thousand eight hundred and sixty corresponding to the third day of Kartick Budee, sumbut nineteen hundred and seventeen.

G. Ramsay, Lieut, Col, Resident at Nipal

CANNING

Viceroy and Governor-General.

This Treaty was ratified by His Excellency the Governor General, at Calcutta, on the 15th November 1860.

A.R. Young

Deputy Secretary to the Government of India.

08 Aug. 2013

APPENDIX “B

Main Trade And Transit Points Along The Indo-Nepal Border

AGREED ROUTES FOR MUTUAL TRADE			
S.N.	NEPAL	INDIA	TRANSIT POINT TO CULCUTTA
1.	Pashupatinagar	Sukhia Pokahri	Sukhia Pokhari
2.	Kakarbhitta	Naxalbari	Naxalbari (Panitanki)
3.	Bhadrapur	Galgalia	Galgalia
4.	Biratnagar	Jogbani	Jogbani
5.	Setobandha	Bhimnagar	Bhimnagar
6.	Rajbiraj	Kanauli	Jayanagar
7.	Siraha	Jayanagar	Janakpur
8.	Jaleswar	Bhitamore(Sursand)	Bhitamore
9.	Malangawa	Sonabarsa	Malangawa
10.	Gaur	Birgania	Gaur
11.	Birganj	Raxaul	Raxaul
12.	Bhairahawa	Nautanwa	Nautanwa (Sonauli)
13.	Taulihawa	Khunwa	Taulihawe
14.	Krishnanagar	Barhni	Barhni
15.	Koilabas	Jarwa	Jarwa
16.	Nepalgunj	Nepalgunj Road	Nepalgunj Road
17.	Rajapur	Katerniyaghat	Rajapur
18.	Tikonia/Sati (Kailali)	Prithvipur	Tikonia
19.	Dhangadhi	Gauriphanta	Gauriphanta
20.	Mahendranagar	Banbasa	Banbasa
21.	Mahakali	Pithoragarh	Jhulaghat
22.	Darchula	Dharchula	Darchula

APPENDIX “C”

TEXT OF THE TRIPARTITE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM, THE GOVERNMENT OF DOMINION OF INDIA AND THE GOVERNMENT OF NEPAL

Memorandum of Agreement At a meeting held at Kathmandu on 1st May 1947 between representatives of His Majesty's Government in the United Kingdom, the Government of India and Government of Nepal, His Highness the Prime Minister and Supreme Commander-in-Chief of Nepal stated that he welcomed the proposals to maintain the Gurkha connection with the armies of the United Kingdom and India on the following basis "If the terms and conditions at the final stage do not prove detrimental to the interest or dignity of the Nepalese Government, my Government will be happy to maintain connections with both armies, provided men of the Gurkha regiments are willing so to serve (if they will not be looked upon as distinctly mercenary)."

1. Discussions have taken place in Delhi between representatives of His Majesty's Government in the United Kingdom and of the Government of the Dominion of India and the points of agreement are embodied in the Memorandum dated 7th November 1947 a copy of which forms Annexure I of this document. Necessary financial adjustments between the two Governments are still under consideration.
2. Further discussions between the representatives of the three Governments have taken place at Kathmandu during which the Government of Nepal have put forward certain pertinent observation on the memorandum of agreement referred to in the proceeding paragraphs which are set out in Annexure II. In regard to these points, the representatives of His Majesty's Government in the United Kingdom and of the Government of the Dominion of India have replied as follows:
 -) Location of the Recruiting Depots The use of the existing depots at Gorakhpur and Ghum has been sought by His Majesty's Government

in the United Kingdom for a temporary period only pending establishment of their own depots in Nepal. The wishes of the Government of Nepal have been noted and arrangements for the establishment in India of the Recruiting Depots required to meet the needs of the Gurkha units of the British Army will be settled between the United Kingdom and Indian Governments.

) Desire of the Government of Nepal that the total number of Gurkha Units to be employed in the Armies of the United Kingdom and of India shall be limited and brought down to the peace-time strength of 20 Battalions out of which Battalions will be allotted to the British Army. The representatives of Her Majesty's Government in the United Kingdom and of the Government of Dominion of India have taken note of the wishes of the Government of Nepal. The representative of Her Majesty's Government in the United Kingdom has explained that the long term planning of the British Post-War Army has proceeded on the assumption that the Government of Nepal would be prepared to furnish sufficient men to establish the equivalent of an Infantry Division in South-East Asia and he has received an assurance from the Government of Nepal that final decision on the question of recruitment of Gurkhas in excess of 8 Battalions at peace-time strength shall be left open until Her Majesty's Government in the United Kingdom have had an opportunity of considering the view of the existing political situation in India.

) Arrangement for the import of foreign currency belonging to the Gurkha units of the 8 Battalions serving overseas. It is noted that the Government of the Dominion of India has agreed to afford all normal facilities in regard to the import of foreign currency belonging to these men (Annexure I, Item 10). A reply to the specific points raised in this connection will be sent to the Government of Nepal in due course.

3. The Government of Nepal being generally satisfied in regard to the terms and taking note of the agreement dated 7th November 1947 reached between Her Majesty's Government in the United Kingdom and of the Government of

Dominion of India hereby signify their agreement to the employment of Gurkha troops in the armies of the United Kingdom and of India.

4. In addition to the observations referred to above the Government of Nepal have put forward certain suggestions connected with the employment of Gurkhas in the armies of the United Kingdom and of India. These suggestions are contained in Annexure II of this document and the views of the two Governments thereon will be communicated to the Government of Nepal in due course.
5. Note has been taken of the desire of Her Majesty's Government in United Kingdom that prompt action be taken to ascertain the wishes of the personnel of the 8 Battalions concerned as to whether they desire to be transferred for service under the United Kingdom Government. With this objective in view a questionnaire and a memorandum embodying terms and conditions of service have been prepared by the representatives of Her Majesty's Government in the United Kingdom. These documents are acceptable to the Governments of India and Nepal. They will be issued to the personnel of the 8 units concerned as soon as possible. In accordance with the wishes of the Government of Nepal as well as those of the Government of India it is agreed that their representatives will be present with the 8 units while the referendum is being taken.
6. The representatives of the three governments desire to place on record that their deliberations have been conducted in an atmosphere of cordiality and goodwill and are confident that the friendly relations which have existed in the past will be further cemented as a result of the arrangements which have been agreed for the continued employment of Gurkha soldiers in the armies of the United Kingdom and of India.
7. Signed in Triplicate at Kathmandu this 9th day of November 1947.

Sd/-For the Government of the United Kingdom

Sd/-For the Government of Dominion of India

Sd/-Padma Shamshere Jung B.R.For the Government of Nepal

APPENDIX “D”

TREATY OF PEACE AND FRIENDSHIP, KATHMANDU, JULY 31, 1950

The government of India and the Government of Nepal, recognizing the ancient ties which have happily existed between the two countries for centuries; Desiring still further to strengthen and develop these ties and to perpetuate peace between the two countries; Have resolved therefore to enter into a Treaty of Peace and Friendship with each other and have, for this purpose, appointed as their plenipotentiaries the following persons, namely,

The Government of India:

His Excellency Shri Chandreshwar Prasad Narain Singh, Ambassador of India in Nepal.

The Government of Nepal:

Maharaja Mohun Shamsher Jang Bahadur Rana, Prime Minister and Supreme Commander-in-Chief of Nepal, who, having examined each other's credentials and found them good and in due form have agreed as follows:

Article I

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

Article II

The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring state likely to cause any breach in the friendly relations subsisting between the two Governments.

Article III

In order to establish and maintain the relations referred to in Article I the two Governments agree to continue diplomatic relations with each other by means of representatives with such staff as is necessary for the due performance of their

functions. The representatives and such of their staff as may be agreed upon shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

Article IV

The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to.

Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible. The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of corresponding status of any other State.

Article V

The Government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

Article VI

Each Government undertakes, in token of the neighborly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

Article VII

The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.

Article VIII

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

Article IX

This treaty shall come into force from the date of signature by both Governments.

Article X

This Treaty shall remain in force until it is terminated by either party by giving one year's notice.

(At a Press Conference in New Delhi on 3rd December 1959 Prime Minister Mr. Jawaharlal Nehru disclosed that letters were exchanged along with the signing of the Treaty which have been kept secret – Editor) (Foreign Policy of India, Text of Documents; Lok Sabha Secretariat, New Delhi: 1966: 56-58)

Letter exchanged with the Treaty

KATHMANDU

Dated the 31st July 1950

EXCELLENCY,

In the course of our discussion of the Treaties of Peace and Friendship and of Trade and Commerce which have been happily concluded between the Government of India and the Government of Nepal, we agreed that certain matters of details be regulated by an exchange of letters. In pursuance of this understanding, it is hereby agreed between the two Governments:

1. Neither Government shall tolerate any threat to the security of the other by a foreign aggressor. To deal with any such threat, the two Governments shall consult with each other and devise effective counter-measures.
2. Any arms, ammunition or warlike material and equipment necessary for the security of Nepal that the Government of Nepal may import through the territory of India shall be so imported with the assistance and agreement of the

Government of India. The Government of India will take steps for the smooth and expeditious transport of such arms and ammunition through India.

3. In regard to Article 6 of the Treaty of Peace and Friendship which provides for national treatment, the Government of India recognize that it may be necessary for some time come to afford the Nepalese nationals in Nepal protection from unrestricted competition. The nature and extent to this protection will be determined as and when required by mutual agreement between the two Governments.
4. If the Government of Nepal should decide to seek foreign assistance in regard to the development of the natural resources of, or of any industrial project in Nepal, the Government of Nepal shall give first preference to the Government or the nationals of India, as the case may be, provided that the terms offered by the Government of India or Indian nationals, as the case may be, are not less favorable to Nepal than the terms offered by any other Foreign Government or by other foreign nationals. Nothing in the foregoing provision shall apply to assistance that the Government of Nepal may seek from the United Nations Organization or any of its specialized agencies.
5. Both Governments agree not to employ any foreigners whose activity may be prejudicial to the security of the other. Either Government may make representations to the other in this behalf, as or when occasion requires.

Please accept Excellency, the assurances of my highest consideration.

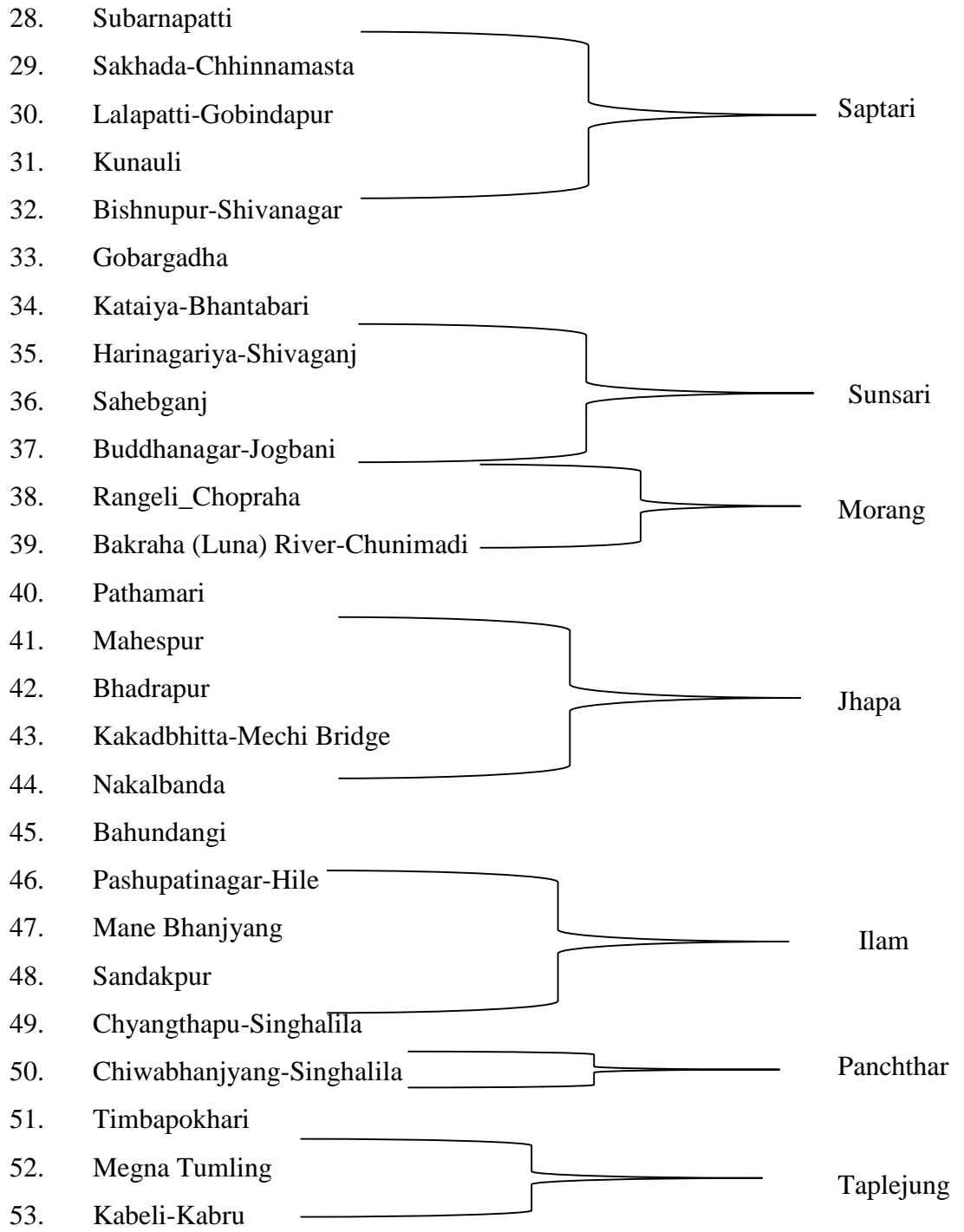
(Sd.) Mohunshamsher Jang Bahadur Rana Maharaja, Prime Minister and Supreme Commander-in-Chief of Nepal

To His Excellency Shri Chandreshwar Pasad Narain Singh Ambassador Extraordinary and Plenipotentiary of India at the Court of Nepal, Indian Embassy Kathmandu.

APPENDIX “E”

LOCATION OF VIOLATED BORDER IN NEPAL

1.	Kalapani-Limpiyadhura-----Darchula Brahmadevmadhi Purnagiri	
2.	Tanakpur barrage and inundated Area	
3.	Banbasa-Gaddachauki	
4.	Saradha Barrage Area	
5.	Shuklaphanta	
6.	Parasan-Khuddakankad	
7.	Sati-Birnal-Bhadanala-----	Kailali
8.	Manau, Khairi and Tapara	
9.	Murtiya	
10.	Manpur-Bhimapur	
11.	Santalia	
12.	Holia, Nainapur (Laxmanpur Barrage)	
13.	Koilabas -----	Dang
14.	Krishnanagar, Thanda River Coast ----- Kapilbastu	
15.	Dnab River Basin (Rasiyawal-Khurdalotan Barrage)	
16.	Sunauli Border Point	
17.	Susta Narsahi Area ----- Nawalparasi	
18.	Balmiki Ashram Area	
19.	Daranala-Darichure	
20.	Thori	
21.	Laxmipur-Pipara	
22.	Birganj-Sirsiyama-Alau	
23.	Gaur-Jamuna ----- Rautahat	
24.	Tribhuvannagar	
25.	Sangrampur-Hathiaul	
26.	Madar-Chandraganj	
27.	Tandi	



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