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NEPAL HAS NOT TAKEN UP BLOCKADE WITH INDIA AT DIPLOMATIC LEVEL (WITH VIDEO)

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Surya Prasad Subedi is a Professor of International Law at the University of Leeds, UK and Chairperson of Global Policy Forum Nepal, a group of academicians of Nepali origin. Subedi is in Kathmandu for a conference on current crisis and Nepal-India relations.

Subhash Ghimire, Gunaraj Luitel and Mahabir Paudyal caught up with him to discuss the Indian embargo and ways to resolve it.

How do you compare the ongoing Indian blockade with that of 1989?

People's pains and sufferings are the same. There was an acute shortage of essential goods and fuel during the 1989 blockade. People had to stand in long lines to get fuel and daily goods. It is the same today. It hurts to see nothing has changed in Nepal since 1989. If anything, the country as a whole has become weaker. Back then, the country was united against the blockade. The situation is different now.

But some still refrain from calling it a blockade.

There is enough evidence to prove that this is a blockade. Yes, goods have been entering Nepal from India, but in a controlled manner and very less. They have not been coming even from border points where there is no disruption. There is no free flow of goods. Only 15-20 percent goods have entered, which is not sufficient for Nepal. You may debate whether this is a partial blockade. But there is no question that Nepal's right, as a landlocked country, to import goods from other countries without obstruction and its right to access of the sea has been violated. The rights granted to Nepal by international laws have not been respected.

It's said that Nepal has failed to internationalize this blockade. What is your reading?

Let me answer this in the context of 1989. Back then Nepal's position vis-à-vis blockade was clear. The government had made it clear India had violated Nepal's rights under international laws. This time I have heard our ministers and even prime minister talk about the blockade. But the government has failed to show to global community with concrete evidence of how Nepal has been blockaded. So far as I know, the government of Nepal has not made an official correspondence with the government of India to lift the blockade.

The government has also not issued its position paper yet. Back in 1989, the government had a clear strategy of informing the international community about ground realities. But not this time. Let me give the benefit of doubt to the government. But I still feel not enough has been done.

What should our government realistically do?

It must issue a formal statement and notify general public about ground realities. It must show clear evidence to the global community that Nepal's right to trade and transit and its right to access of sea without obstruction has been violated. It should release a position paper so that global community knows what is really happening in Nepal. What the ministers and leaders say in public does not amount to an official stand. The Ministry of Foreign Affairs should release a clear position paper to foreign missions based in Nepal and Nepal's missions abroad. These missions will flow the information to their concerned governments.

Do you suggest that Nepal should invoke international laws as well?

Nepal can adopt political, diplomatic and legal channels for the resolution of the current crisis. Politically, our ministers and leaders can inform the international community through international forums or through direct communication. Diplomatically, the Ministry of Foreign Affairs can inform foreign missions about the situation. And third, legally, Nepal, as a plaintiff, can appeal to international legal bodies to resolve disputes of this kind. The third option should be adopted only when first and second have been exhausted.

Ideally, Nepal should make its position clear with India and appeal to India that Nepal's rights to trade, transit and import and export have been violated and India should ease this situation. It should make a formal appeal to India through an official correspondence.

The Foreign Minister has notified the UN and the government has issued a white paper. What more can it do?

I do not suggest Nepal has not internationalized the blockade at all. But internationalization efforts have not been result-oriented. So far efforts have been made only at political level. This does not give you desired outcomes, though it might exert moral pressure on India. Disseminating information on political level may help draw international attention. But if you really want to internationalize blockade, you must go ahead diplomatically and legally. UN bodies cannot do much to help Nepal at the moment, except lending moral and political support. Of course, the UN could have taken a step forward. But unless Nepal seeks a legal redress from international community with clear evidence of blockade and its effects not much can be done.

I still feel that Nepal has not seriously taken up the issue with India at diplomatic level. Leaders have been delivering fiery anti-India speeches. This does not help. But like I said, if Nepal wants to internationalize blockade it must take the legal route. It must knock the doors of international legal

and semi-legal bodies. International laws have binding provisions. There is an intergovernmental body called International Tribunal for the Law of the Sea based in Hamburg, Germany, established by United Nations Convention on the Law of the Sea. Both Nepal and India are parties to this convention and it has a clear provision that in case a nation feels its right has been violated by another nation, the concerned nation may file a case against that country. Nepal can go to Hamburg.

It may even knock the doors of International Court of Justice. There are different options. Nepal is a party to WTO. Nepal can file a case saying India has violated clause 5 of WTO's General Agreement on Trade and Services (GATS) and appeal to dispute resolution authority of WTO. This body can immediately start investigation. These bodies will decide whether this is a blockade or not.

But right now India refuses to even acknowledge there is a blockade. So whatever these bodies say, it could go on making the same claim.

About 99 percent of verdicts of international justice bodies have been implemented. Besides, when a nation is a signatory to the treaty or international law, it means it will abide by provisions therein and accept the verdicts of international justice bodies. If those legal bodies rule in Nepal's favor, it will exert political, moral and legal pressure on India to abide by the verdict. I cannot imagine India, a country that believes in democracy and rule of law and is committed to promoting international rule of law, will reject such verdict.

But isn't there a risk of further rift in Nepal-India relations if Nepal takes this approach?

It depends on how India perceives it. But there are cases of disputes between nations being resolved by international justice bodies. Countries like Denmark, Netherlands, Germany and Britain have often knocked the doors of international legal bodies to resolve disputes among them. They have accepted the verdicts. The relations among the countries in question are warm. This is how civilized nations behave. I can't believe India won't accept international verdict.

India claims border obstruction is due to protests on Nepali side.

India is a rising economy of Asia and an aspiring global power. We wish India well. But Nepal is an India-locked country. India has power to resolve blockade. It is obligated to international laws as well. Protest at the border cannot be an excuse.

How do you read recent joint statement by David Cameroon and Narendra Modi over Nepal crisis?

It's only a political statement. Such statements are issued as a part of diplomatic niceties and are often made when one head of government meets another head of government. Such statements do not have legal implications. Most such statements are meant to reinforce political and diplomatic understanding between two countries. They are not taken as legal evidence in international courts. Vision statements, press communiqué, and public announcements do not influence legal provisions.

How have members of foreign academia reacted to blockade? What is your view?

The UK's academic community has spoken against the blockade. Britain Nepal Academic Council has issued a press statement. Such statements from the community of academicians help a little. But like I said what counts for more are diplomatic efforts. Our government seems to have failed to do much due to its diplomatic weaknesses. There is no Nepali envoy to the UK at the moment. Our UK mission is handled by acting envoy who does not have access with higher up authorities. Nepal should have appointed envoys in key nations on time. Our failure to do so has exacerbated the problem. We are celebrating 200th anniversary of diplomatic relations with the UK, but our UK mission has no envoy. If we had visionary leadership, and if our administrative and diplomatic setups had not been so messed, such a situation would not have arisen. If Nepal was united, our administrative political and diplomatic mechanism intact and functioning, I believe, India would think twice before imposing a blockade in Nepal.

What do you think contributed to this mess?

There are many factors but erosion in academia is the primary factor. Our higher education bodies were badly politicized. There is no respect for academicians and colleges and universities have become political playgrounds. We spoiled them. Badly educated people have captured our administrative, political and academic bodies. They could offer no vision for the country. The dominance of uneducated people in politics and administration is the cause of the current mess. We don't have a culture of constructive criticism; people are divided along party lines. There is no culture of learning and sharing, no practice of archiving and keeping records. When a crisis hits we panic and only then assemble and discuss what to do. Ad hocism is rampant.

How long do you think it will take Nepal to come out of the current crisis?

I am hopeful. Nepalis have the ability to resolve this crisis. Despite weaknesses in our administrative and diplomatic mechanisms, the ground on which we stand is solid. We have brought the constitution through a democratic exercise. There are international legal provisions to help Nepal emerge from this crisis as well. If Nepal can make its position clear to the international community and at the same time increase its diplomatic interactions with India, this crisis will end soon.

Do you think Nepal's foreign policies need to be reviewed in the new context?

Nepal's foreign relations are guided by principle of Panchaseel, UN charter and SAARC charter. I don't see the need to review these fundamental guiding principles. As for Nepal's relation with India, Nepal needs to start looking at it from a new perspective. We need to look into how the 1950 treaty has helped or hindered us. This could be the right time to maintain equidistance relationships with both India and China. Time has come for two democratic nations to democratize their relations based on modern principles of international laws and international relations. Again, we cannot offend India by cozying up to China and vice versa. Our geostrategic location does not permit us this luxury. In principle we have relation of equidistance with China and India. But in practice we are overdependent on India. This overdependence needs to be cut down.

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