

Nepal: Responding to the Royal Coup

I. OVERVIEW

King Gyanendra's seizure of power and arrest of democratic party leaders on 1 February 2005 will likely aid the Maoist insurgency and intensify the civil war.¹ But by bringing the crisis to a head he has created an opportunity for diplomatic efforts to pull Nepal back from the brink of collapse and develop an effective counter-insurgency strategy. The key countries and organisations involved in the country -- India, the U.S., the UK and the UN -- need to work together to strengthen a collapsing state and establish a plan to deal with the Maoist insurgency.² Acceptance of the coup and lack of action would only increase the chances of a Maoist victory and a descent into worse violence.

There is also an urgent human rights crisis in Nepal that requires international action. The record on disappearances and extra-judicial killings is one of the world's worst. Hundreds of political figures and activists have been detained, and protests have been violently suppressed. An expanded campaign against the Maoists by the Royal Nepalese Army (RNA) is likely to result in worsening abuses while offering no realistic chance of defeating the insurgency or reaching a negotiated solution. At the same time, the government is vulnerable to external pressure because it is heavily dependent on foreign aid.

The policy priorities should be:

- re-establishment of constitutional rule, including restoration of all suspended freedoms, release of all

¹ For more details on the coup see Crisis Group Asia Report N°91, *Nepal's Royal Coup: Making a Bad Situation Worse*, 9 February 2005.

² This paper deals with immediate policy steps to strengthen the state in order that it can develop a political, economic and military strategy to defend itself against a violent insurgency and recover the ground it has lost in the last several years. It does not address in detail the longer-term issue of how to end the Maoist threat, through military means or negotiations, or a combination of those two approaches: this will be the subject of future Crisis Group reporting. Detailed policy reports will also shortly be published on three critical areas for reform -- the constitution, political parties and the security sector -- and on how best to respond to the current human rights crisis.

people arrested in the royal crackdown since 1 February 2005 and revocation of the state of emergency;

- expanded protection of human rights, including through full and immediate access to all places of detention for the National Human Rights Commission (NHRC) and the International Committee of the Red Cross (ICRC);
- a stronger legal framework to protect rights, including through repeal of the Terrorism and Destructive Activities Ordinance (TADO);
- re-establishment of democratic institutions and strengthening of the state's administrative and governance capacity across the country; and
- a broad-based political, security and socio-economic strategy to address not only the insurgency but also the underlying issues that have fuelled it.

To achieve these, donors should immediately implement a range of measures to pressure the royal government. Instead of vague threats, they should take the following steps at once and only lift them when specific conditions are met:

- suspend all military assistance that is not essential to maintaining the security status quo;
- suspend all direct bilateral and multilateral budgetary support to the government;
- initiate a review of all current development assistance and prepare plans for phased suspension and withdrawal of these programs;
- signal displeasure with the king's action by diplomatic and protocol means (including cancellation of visits and invitations); and
- support a strong resolution on human rights at the UN Commission on Human Rights in Geneva in March 2005.

The best mechanism to coordinate this would be a Contact Group bringing together the major powers and institutions that have been active in developing a policy towards Nepal's conflict. This group might in turn appoint a special envoy to advance its agreed political response to the coup and the insurgency. It will not be easy to achieve

all policy objectives but a demonstrably united international front would demand attention in Kathmandu and be able to send a strong message to all involved that political institutions must be rebuilt if the state is to survive the insurgency. If the country's main political forces cannot agree on a common agenda, they all stand to lose.

The Contact Group and other donors should make clear that they expect the measures demanded to be taken immediately and to be sustained. The royal government must be judged on its actions rather than its public pronouncements. If the initial round of pressure does not achieve results, and the king is still unwilling to relinquish absolute power, donors should consider:

- suspending all military aid, including provision of spare parts for vehicles and helicopters and aviation fuel;
- suspending all assistance (including development assistance) apart from humanitarian aid;
- introducing targeted sanctions including a freeze of the assets of the royal family, senior officials, military officers and their families, visa bans and suspension of the RNA's lucrative involvement in UN peacekeeping operations; and
- encouraging the Security Council to investigate and prosecute both government and Maoist suspects who have escaped justice due to Nepal's inadequate judicial procedures.

Should the king still drag his feet, it would be time to consider more radical options, including international expressions of support for a republic rather than constitutional monarchy. Gyanendra may well have tipped support within the country decisively toward a republic already but he should be offered one last chance to agree to policies that would allow the Nepali state to respond effectively to the Maoist challenge. If he continues on his present course, his coup will mark a stage leading to intensified conflict and possibly a Maoist victory.

II. A COUP THAT CANNOT BRING PEACE

A. THE KING'S PLAN

The king and his new ministers have argued that only a strong, authoritarian government can deliver peace. The newly appointed deputy premier, Tulsi Giri, argues that Nepal is acting no differently than the U.S. after 11 September 2001: "Every country has a problem which it

is trying to solve", he said, "but then it's not justice that you make comments on how Nepal is dealing with it".³ How the king might achieve a lasting resolution of the conflict is unclear. He may envisage three scenarios but none is likely to succeed:

- **Talks.** The new Council of Ministers has called for negotiations with the Maoists⁴ but there is no realistic prospect. The insurgents' chairman, Prachanda, their spokesman, Krishna Bahadur Mahara, and other figures have reiterated that they will not deal with the king.⁵ Even if they were to come to the table, talks between forces representing the extremes of the political spectrum would be unlikely to deliver a stable long-term settlement. More probably, the Maoists would only use them as a tactical diversion and a means for weakening the monarchy further.
- **Military pressure.** Even if the generals recognise that a knock-out military victory is impossible, many of them argue that a sustained offensive would weaken the Maoists enough to force them into talks without preconditions. But even the "bloody nose" objective Indian advisers previously recommended is unlikely to be delivered. The army has shown little capacity to hurt the rebels, and military experts have been unimpressed by its progress in adapting to a counterinsurgency campaign. Since its deployment in November 2001, the military position has progressively weakened, and the RNA is now burdened with extra responsibilities which will distract it from frontline fighting. State security forces, which now have to guard against unrest from the political mainstream, will be even less likely to win support and develop improved intelligence capacity. Moreover, the royal coup will likely prove a recruiting boon for the Maoists, particularly from disaffected leftist party activists.

³ Interview with Reuters quoted in "Dr. Giri stands against int'l criticism", *Kathmandu Post*, 16 February 2005.

⁴ A senior minister of the newly formed cabinet has said that the government would soon form a team to hold peace negotiations with the Maoist insurgents. According to reports, Minister for Culture, Tourism and Civil Aviation Buddhi Raj Bajracharya said that the team would discuss the insurgents' demands only after they agree to talks. "The Maoists have repeatedly said that they would hold a dialogue with the King only. Now, it's the best time for them to come for talks as the present government is formed under the chairmanship of His Majesty", reports quoted the Minister as saying. *Nepalnews.com*, 7 February 2005.

⁵ Prachanda's press statement of 12 February 2005 stated unambiguously that "the possibility and rationality of talks with Gyanendra Shahi has ended in the aftermath of [his] murdering of achievements of [the 1990 democracy movement]".

- **Maoist collapse.** Ever since the Maoists' plenary meeting in August 2004, Kathmandu government and diplomatic circles have been buzzing with talk of serious splits within their leadership. Many analysts hope that such internal tensions will fatally divide the movement. But similar speculation has frequently proved groundless. The Maoists do have differences over strategy but they remain disciplined and united. Indeed, they encourage a "two-line struggle" within the party as a way of developing policy.⁶ As long as they feel they have momentum, serious splits are not likely. Attempts to "decapitate" the insurgency by arresting or killing key leaders would at best entrench local warlords and groups rather than produce a total collapse. Moreover, a negotiated settlement -- the goal of any realistic strategy -- would be far easier to reach with a unified Maoist leadership than a series of regional splinter movements.

There have been suggestions that the king's move is popular in Nepal, but there is no evidence for such claims. If the move were truly popular, it would not seem to have been necessary for the king to impose draconian restrictions on the media and communications, with many of the most vocal critics jailed and others intimidated into silence. The king marked Democracy Day on 19 February 2005 by having schoolchildren bused in to celebrate while public transport was banned and phone lines cut to prevent demonstrations by political parties.

The only two recent large scale, professional surveys of Nepali popular opinion in the last year both indicate a popular preference for a constitutional monarchy and extremely limited support for an absolute monarchy. A July 2004 nationwide poll found that 60 per cent of respondents favour a democracy with a constitutional monarchy, 17 per cent democracy without a monarchy; 9 percent a return to the Panchayat system, and only 2 per cent an absolute monarchy.⁷ Of 3,249 respondents to a nationwide survey carried out in August and September 2004, 62 per cent said that "democracy is always preferable to any other form of government" while only 10 per cent thought authoritarianism was acceptable.⁸

⁶ The "two-line struggle" is a term used by the Maoists to refer to internal debates. Mao regarded it as an inevitable aspect of revolutionary work to be encouraged.

⁷ Greenberg Quinlan Rosner Research Inc., "Faith in Democracy Endures, In Spite of Disappointments: Report on the Baseline Survey and Focus Groups", Washington, 16 August 2004, p. 6.

⁸ The study was coordinated by the Lokniti wing of Centre for the Study of Developing Societies (CSDS), New Delhi and supported by International IDEA. A summary of its findings is available on IDEA's website, <http://www.idea.int>. Their relevance in the post-coup context is discussed in detail by

B. STRONGER MAOISTS, WEAKER STATE

The immediate political impact of the royal coup is almost entirely negative in terms of the state response to the Maoist challenge. While royalist claims that Nepal needs a strong hand on the helm may sound reasonable from a distance, the reality is that the king's actions have dramatically destabilised the ship of state. An authoritarian grip on the levers of power means little when the government's writ barely extends beyond Kathmandu and a few other urban areas.

The assault on democratic parties and institutions strengthens the Maoists and increases the likelihood that the mainstream parties will join the rebels in a loose alliance against the king.⁹ However such an alliance is structured, the fact that the Maoists are not only the best organised and most determined political force in the country but also armed and violent gives them excellent chances to control it. They will seek to co-opt other parties and use them to achieve their long-standing goals. The chances that this could result in some form of Maoist victory have been greatly increased.

The Maoists almost certainly believe that their analysis of Nepali society and their strategy of protracted war have been vindicated. They had long hoped that their opponents would eventually be reduced to a royalist rump with a limited support base and they will interpret moves within mainstream parties towards republicanism as evidence of growing support. The first indications in the aftermath of the coup suggest that the king's actions have pushed even some hitherto staunch monarchists toward a republican position.¹⁰ While the king would gain

Yogendra Yadav, "Nepalis want democracy, not monarchy", *The Hindu*, 3 February 2005 (available at <http://www.hindu.com/2005/02/03/stories/2005020314261100.htm>).

⁹ The Maoist press statement of 4 February called for "all the pro-people political forces, civil society, intellectual community and all the level and sphere of people" to form a united front "to overthrow feudal autocracy". The Maoists added, "We would also like to clarify to all those concerned that we are utterly ready for necessary sacrifice and flexibility from our side for this purpose".

¹⁰ Sujata Koirala, daughter of Congress leader Girija Prasad Koirala and a senior party leader herself, says that the monarchy has now lost the confidence of the people ("Escaped Daughter of Ex-Premier Says King Ruling by Terror", Inter Press Service, 13 February 2005). Congress Central Committee member Krishna Prasad Sitaula has stated that his party is "even ready to join hands with the Maoists to put an end to the monarchy" ("Nepali Congress may join hands with Maoist rebels", Press Trust of India, 8 February 2005). Moderate voices may find it hard to make themselves heard: due to the coup the Nepali Congress has

credit for any dramatic progress in the conflict, the institution of the monarchy is no longer shielded from political failure. What support, or tacit consent, it has gained or held on to can be expected to evaporate rapidly if there are serious economic, political or security setbacks.

Far from reassuring the public at large, the RNA has yet to ensure its own security in the face of Maoist attacks. There are precious few indications that the battle for hearts and minds has been joined at all, let alone won. Many troops are tied down guarding essential infrastructure such as telecommunications installations, power stations, government offices and major highways, while others now have taken on extra duties such as censoring the media, detaining political opponents and becoming more involved in administrative affairs at the central and district level. Faced with managing potential civil unrest from both the centre and the hard left, it could rapidly find itself overstretched. There is also a long-term risk of the growing militarisation of society. Once armies get a taste for power and control of resources, they tend to be reluctant to relinquish them.

On 13 February 2005 (the ninth anniversary of the start of their armed campaign) the Maoists launched a program of indefinite blockades, which has further challenged the state's capacity to respond. All indications are that these have been largely successful. Little traffic has used the main highways, even though the Maoists have not attempted to enforce them by direct military action.¹¹ "It's remarkable that there's no panic yet in Kathmandu", commented a western diplomat. "All the information we have suggests that the blockade could soon make life in the capital very difficult".¹²

The government's credibility and capacity, meanwhile, is at an all time low. The post-coup regime has no constitutional legitimacy and doubtful ability to implement any program. The first meeting of the Council of Ministers announced a ludicrously overambitious 21-point plan, including construction of an east-west railway, full employment and educational scholarships for minorities. It was not revealed how an impoverished country facing a liquidity crisis would pay for this.¹³ Delivery of

indefinitely postponed its 11th General Convention which had been scheduled to take place in early March.

¹¹ Even the censored Nepali media has recognised the seriousness of the blockades: "Even as the authorities have assured of security and have even provided escorts to vehicles coming to and leaving the capital, Kathmandu, traffic along major highways remains very low since last few days." ("Air ticket sales soar as blockades continue", nepalnews.com, 23 February 2005)

¹² Crisis Group interview, Kathmandu, 23 February 2005.

¹³ The *Kathmandu Post* has estimated that the government

government services depends on the geographical reach of the state and a capable bureaucracy. But the withdrawal of most local government from the countryside -- already well underway before the coup -- is now being exacerbated by the army's intervention in civilian affairs, a move more likely to damage morale among civil servants than improve efficiency.¹⁴

C. A HUMAN RIGHTS CRISIS

For the civilians who are the primary victims of the conflict, the coup is likely to herald further miseries as the already dire human rights situation deteriorates further. The passing reference to respect for rights made by the king in his proclamation was ambivalent: "all the organs of the state must remain alert in honouring and upholding human rights. However, it will be unfair to put the state and terrorists on equal footing". Signs of an atmosphere of even greater impunity for the security forces have appeared with regularity since the coup. For example, the first attempts to lodge habeas corpus writs were unsuccessful; soldiers prevented National Human Rights Commissioner Kapil Shrestha from leaving the Kathmandu valley; prominent rights activists such as Krishna Pahari and Gauri Pradhan have been detained as has been Professor Lok Raj Baral, a respected academic and former ambassador to India; peaceful pamphleteers and demonstrators have been picked up off the streets of Kathmandu. The most reliable estimate is that 385 political leaders or activists and 35 human rights defenders have been detained since 1 February.¹⁵

now needs to mobilise an extra 32.31 billion rupees (approximately \$450 million) if it is to meet its planned expenditure of Rs115.29 billion rupees (\$1.6 billion) for the fiscal year 2004--2005 ("Will Nepal meet the resource gap?", 24 February 2005). Nepal's foreign currency reserves of \$1.7 billion may not be sufficient to withstand a severe liquidity crunch, especially if there is a further reduction in foreign tourism and any disruption to vital remittance income ("Coping with coup", *Sunday Express*, 6 February 2005; available at http://www.indianexpress.com/full_story.php?content_id=64159).

¹⁴ "The security forces have stepped up monitoring of government offices providing direct services to general public since Monday. On the first day, the security team is reported to have launched sudden inspection of Passport Department, Land Revenue Department, Kathmandu District Administration Office and Transport Management Office in the valley. Royal Nepalese Army (RNA) spokesman Brigadier General Deepak Gurung said that the army had to step up monitoring of the government offices after commoners had lodged complaints against these offices". "Security forces start monitoring govt. offices", www.kantipuronline.com, 8 February 2005.

¹⁵ Asian Human Rights Commission, "UPDATE (Nepal): Additional lists of arrested political leaders/activists and

The prospects for further bloodshed, as and when the RNA can spare the units for offensive action, seem great. Indications from within the military are that it is annoyed at the failure of "C"-type cordons, is preparing to shift to "O"-type encirclement and engagement, and will launch operations on the principle of "full destroy". These new tactics explicitly recognise that civilian casualties are both likely and acceptable. Already reports from Morang district suggest that a major "encounter" between the army and Maoists has resulted in the deaths of at least three schoolchildren. With no freedom for investigation and reporting of such incidents the potential for abuses and the sense of impunity are greatly increased.

III. WHAT CAN THE INTERNATIONAL COMMUNITY DO?

A. THE PRIORITIES

International policy on Nepal has failed. Quiet diplomacy and support for the king have not worked. Since 2002, the main players -- India, the U.S., and the UK -- have been urging the king to work with the political parties to develop a common political strategy toward the Maoists. The EU has taken a similar stance. Peace-building efforts such as the creation of a secretariat to advance a negotiated settlement and the provision of technical conflict management expertise have not been backed by adequate political will. Instead, and despite repeated warnings from all sides, the king has seized power, and the situation has worsened significantly. Acceptance of the present course would lead to further instability and hasten a possible takeover by the Maoists.

The first international reaction to the coup was strong¹⁶ but there is a risk that as the days go by the situation may appear to normalise, and accepting the new status quo could become the line of least resistance. The king and his advisers were certainly surprised by the extent of negative reaction, not least Indian refusal to attend the South Asian Association for Regional Cooperation (SAARC) summit at which Gyanendra had hoped to appear as Nepal's head of government.¹⁷ But they are prepared to weather a brief storm of protest. Palace officials brushed off the stern Indian statement on the

coup with the comment that "Nehru said exactly the same things in 1960 [when King Mahendra dismissed an elected government and seized power]. But he came round soon enough". Palace emissaries have been making open comparisons with General Pervez Musharraf's seizure of power in Pakistan and subsequent rehabilitation by the international community.¹⁸

The international community as a whole has little enthusiasm for close involvement with Nepal's troubles. Most countries have long hoped that India, its most influential neighbour, would play a more active role in ensuring stability in its backyard. While the severity of Nepal's situation has slowly dawned on the outside world, and the precariousness of its state institutions are now a matter of wider concern, it is all too likely that attention will dwindle rapidly, and the policy drift that has accompanied Nepal's slide towards state failure will continue.

However, the goals of Nepal's friends and neighbours are similar: they want a peaceful, stable, prosperous and democratic Nepal, and they want to avert a violent Maoist takeover. Immediate policy priorities, therefore, are easy to identify:

- ❑ re-establishment of constitutional rule: restoration of all suspended freedoms, release of all those arrested in the royal crackdown since 1 February 2005 and an end to the state of emergency;
- ❑ expanded protection of human rights not only through the signing and full implementation of the NHRC's Human Rights Accord but also by immediately providing full access to all places of detention for the NHRC and the ICRC; and
- ❑ development of a stronger legal framework to protect rights through the repeal of the Terrorism

human rights defenders", 23 February 2005, available at <http://www.ahrchk.net/ua/mainfile.php/2005/959>.

¹⁶ See Crisis Group Report, *Nepal's Royal Coup*, op. cit.

¹⁷ The decision of India's prime minister not to take part in the SAARC meeting scheduled to be held in Dhaka, Bangladesh, in effect resulted in its cancellation since the SAARC charter provides that summits may only be held if the head of state or government of each member state attends.

¹⁸ For example, they say the idea of cutting all phone communications was borrowed from the Pakistani coup. There are clear differences between the situations in the two countries, however. The RNA and the Palace lack the institutional capacity to run the state that the Pakistani military has built up over many decades. International support for Musharraf has been in exchange for his cooperation on terrorism and nuclear proliferation and because of an exaggerated concern that the Pakistan state is under threat from Islamic extremists. Nor is Pakistan a good model for Nepal of economic, political or security management. Tensions are rising across Pakistan; it remains severely under-developed; reforms to areas such as education have faltered; jihadism has not been effectively tackled, and the military looks unlikely to leave power any time soon. It is notable that General Musharraf also justified his coup on the grounds of corruption and the ineffectual nature of political parties. After several years of military rule, Pakistan is no less corrupt. See Crisis Group's extensive reporting on Pakistan at www.crisisgroup.org.

and Destructive Activities Ordinance (TADO), signature of the Additional Protocols to the Geneva Conventions and full implementation of the international instruments to which Nepal is already a party.

B. PRESSURE POINTS

These policies are most likely to succeed if preceded by the judicious application of pressure on the royal government. Certain effective actions have already been taken. Most significantly, India has cut off military aid and the UK has suspended delivery of a planned new package of military assistance.¹⁹ India has also surprised the palace with the force of its diplomatic reaction: blocking the king from obtaining recognition at the SAARC summit, postponing the Indian army chief's scheduled visit to Kathmandu, and strong public statements. The coordinated recall of the Indian, American and all EU ambassadors has also sent a clear signal. The Danish government has suspended all development aid. But international reaction should utilise a wider range of pressure points. In each area there are both measures that should be taken immediately and stronger ones that can be held in reserve in case results are not forthcoming.

1. Non-military assistance

Nepal is heavily dependent on foreign aid. Most development work is funded by outsiders. Essential humanitarian assistance must be continued but much development aid has been thrown into doubt by the royal coup. Donors who work with and through the government had already been concerned by its lack of capacity to implement programs. Many experts on the ground now expect the development environment will make most programs unviable.

□ *First round:*

- (i) freeze of all direct budgetary support to the government;

- (ii) no new agreements with the international financial institutions (IFIs);
- (iii) no new bilateral or multilateral development aid agreements;
- (iv) review all other development assistance and draw up plans for a phased suspension and withdrawal.

- *Second round:* suspend all development assistance channelled through the government.

2. Diplomatic action

Concerted diplomatic action can yield results but only if it sets realistic benchmarks and applies pressure that will be felt in Kathmandu. The international community has not been taken seriously in the past: for example, the Nepal government's commitment letter and the Chair's statement at the 2004 UN Commission on Human Rights did not lead to any improvements in the human rights situation. Donors could easily assert much greater authority if they made clear that Nepal will face intense scrutiny in all possible international arenas and will be judged on action and implementation not words.

□ *First round:*

- (i) support a strong Item 9 resolution at the Commission on Human Rights in Geneva;²⁰
- (ii) cancel pending official visits by Nepali officials;
- (iii) restrict attendance at government functions and all non-essential meetings by Kathmandu-based diplomats.

□ *Second round:*

- (i) reduce diplomatic ties;
- (ii) in the case of lack of improvement in the human rights situation, start preparing a security council decision with respect to investigation and prosecution of possible war crimes;²¹

¹⁹ "India Freezes Arms Aid to Nepal", *Statesman*, 22 February 2005. "British Government Suspends Military Support to Nepal", statement by Foreign Secretary Jack Straw, 22 February 2005. The package included night flying capability and communications enhancements to Short Take Off and Landing surveillance aircraft previously provided, 40 general purpose Land Rovers and Explosive Ordnance Disposal equipment and vehicles. Straw said the UK was "now considering with key international partners what our longer term policy for providing assistance to Nepal should be, including on assistance with a humanitarian purpose". It appears that India's freeze is more comprehensive than the UK's: Britain has not so far suspended military training.

²⁰ Item 9 refers to the agenda item of the Human Rights Commission's annual meeting in Geneva under which countries can raise concerns about "Human Rights in the World". It provides a flexible opportunity for members of the commission to raise emergency human rights situations.

²¹ UN High Commissioner for Human Rights Louise Arbour raised the possibility of such investigations and prosecutions during her visit to Nepal in January 2005, shortly before the royal coup, Nepal is not a signatory to the Rome Statute establishing the International Criminal Court (ICC) but the Security Council could authorise that Court to exercise jurisdiction similar to what is currently under discussion with

- (iii) suspend participation of Nepali troops, police officers, civil servants, etc. in UN peacekeeping missions.

3. Military assistance

The RNA is heavily dependent on foreign assistance for both its operations and prestige and, therefore, should be vulnerable to pressure to change both the king's policies and the disastrous human rights environment that has done so much to reduce the effectiveness of the counterinsurgency. While Nepal ultimately requires outside aid to maintain an effective military, the RNA has enough weaponry, ammunition and equipment to maintain its current level of activity against the Maoists for at least the next few months. A suspension of military assistance would not, therefore, create a military emergency in the short-term but it would make the RNA think hard about where its interests lie and probably prevent the launching of an offensive that would result in substantial civilian casualties while it was doing that thinking.

Military prestige is very much invested in contacts with foreign militaries. Overseas service with UN peacekeeping operations is a lucrative source of income for top military officials and a point of pride. All future military assistance should be conditioned on human rights improvements and the army's non-interference in politics.

- *First round:*
 - (i) freeze all military aid that is not essential to maintaining the security status quo;²²

respect to the situation in the Darfur area of Sudan. The U.S., which objects to the ICC, has opposed such a referral on Darfur and supports the use of an ad hoc tribunal.

²² As noted above, India, which is the RNA's most important supplier, and the UK, which is third, after the U.S., have already announced measures that appear to go at least this far. Military aid has only had a limited impact on the state's capacity to maintain security. More weapons have intensified the conflict without improving security and much materiel has fallen into Maoist hands. There may be practical difficulties in determining what aid is essential and what is non-essential, but the practical rule of thumb would be that RNA capacities should not be increased. Thus while resupply of a certain level of ammunition or other supplies could be justified, increases in those supplies or new or improved systems would not be. There might be legitimate differences about what assistance should be allowed because it is already well into the pipeline. Again, the bottom line should be whether the impact would essentially be to allow the RNA to hold present lines or whether it would be to encourage it to attempt offensive action. Potential military donors should also consider that unlimited supplies have only encouraged the RNA to engage in unproductive, indiscriminate free-fire fights. Limiting its

- (ii) provide no new military aid pending review;
- (iii) suspend international contacts, army-to-army ties, officer training courses, etc.;
- (iv) review the RNA's current involvement in UN peacekeeping options and have the Department of Peacekeeping Operations prepare plans for replacing currently deployed forces.

- *Second round:*
 - (i) suspend all military assistance;
 - (ii) suspend all participation of RNA soldiers in UN peacekeeping operations;
 - (iii) target sanctions (visa ban) on all senior RNA officers and their families.

4. The palace

By seizing power, the king has placed himself at the centre of any diplomatic action. Polite demarches will not resolve this problem. The king and those around him are vulnerable to a number of forms of pressure, some of which have already been exerted. Protocol restrictions are an obvious starting point, although a flexible approach needs to be maintained to allow some communication to facilitate a solution. It is not known what assets the king has outside the country but he has large business interests including a hotel, a tea estate, and stakes in other companies inside Nepal, which link him to members of the Kathmandu elite who have encouraged him to seize power. The Nepali elite is cosmopolitan and well-connected to the outside world and therefore vulnerable to smart sanctions.

- *First round:*
 - (i) limits on international contacts, restrict diplomatic attendance at royal or palace functions, withdrawal of travel and social invitations to royal family and close relatives;
 - (ii) investigate royal and other overseas assets, including bank accounts, property and business interests, and draw up plans for asset-freeze.
- *Second round:*
 - (i) blacklisting of palace-owned or crony businesses and their senior staff;
 - (ii) visa and travel ban for members of the royal family and the royal government;
 - (iii) freeze royal assets overseas.

supplies as well would not only send an important signal but might also improve RNA tactics.

C. AN INTERNATIONAL MECHANISM

"The king just doesn't listen to us -- what can we do?", has become a standard refrain of ambassadors in Kathmandu, who even before the coup were frustrated at their inability to persuade the king to follow their governments' advice.

A major hindrance to successful international pressure has been the diversity of diplomatic voices. While the major players -- most notably India, the U.S. and UK -- have frequently cooperated and agreed on the basic line that there is no obvious military solution to the conflict, successive Nepali governments have proved adept at shrugging off advice. The palace has calculated that political indecision will allow its coup to succeed regardless of the chorus of public disapproval. But hand-wringing does not have to be the only response to this dangerous situation. The key players should organise to deliver their messages more effectively.

1. Forming a Contact Group

If the international community is to play an effective role in helping rescue Nepal from its political crisis and working towards the resolution of its long-running conflict, it must speak with a strong single voice. For this it needs a suitable mechanism. The best would be a Contact Group that brings together at least New Delhi, Washington, and London as well as the UN.

The group could appoint a senior envoy with stature, experience and a mandate to devote considerable time to serious talks in Kathmandu and other capitals.²³ Even without a special envoy, the group could formalise the coordination of policy in a way that sends a clear message to Kathmandu.

2. Members and their positions

Contact Groups have played a significant role in the international response to other conflicts.²⁴ But composition and mandate raise certain questions. When major powers are already coordinating their policies what advantages would a formal grouping bring? Why should certain nations and intergovernmental bodies be a part of it and others not? What scope would the group and its envoy

have for diplomatic engagement and what weight would it carry?

The primary aim of forming such a group for the Nepal crisis would be to make the adoption of a common policy explicit and to reaffirm to all players in the country that they will gain no advantage by seeking to play one power against another. The most difficult immediate issue on which to reach agreement would be the aid question, especially military aid. Ultimately Contact Group members would also need to coordinate their views on negotiations with the Maoists about which they have at least nuanced differences.²⁵ However great their cooperation to date, diplomats have admitted that their sustained efforts to use gentle persuasion have ended in failure. A single group with a high-profile envoy would stand a far greater chance of having its messages heard and acted on.

The composition of the group would be crucial. It would not be a group of equals but rather a loose alliance of interested and influential parties, consisting of three states and the UN. The positions and interests of its members are outlined below.

India. India sees Nepal as part of its sphere of influence and has a unique relationship with it under the 1950 Treaty of Peace and Friendship.²⁶ India asserts, with justification, that other nations may seek to influence Nepal but none is equally exposed to the effect of instability there. India is also the main supplier of military assistance though, as noted, one of its first reactions to the coup was to announce the suspension of that assistance.

While Delhi has been deeply concerned by the royal coup, it faces difficulties in taking policy steps since its diplomats are well aware that any intervention runs the risk of raising Nepal's nationalist hackles and leading to unwanted side-effects. A Contact Group would afford it key opportunities that are otherwise unattainable: (i) a degree of external assistance to Nepal in the resolution of its conflict without ceding decision-making powers to any third party; (ii) the chance to shape international policy without being branded a bullying big brother. Moreover, a mature and cooperative role in such a multilateral grouping could boost Delhi's claim to a permanent seat on the UN Security Council.

²³ Such an envoy would not necessarily have to come from one of the Contact Group member countries.

²⁴ Two current prominent Contact Groups deal with the Middle East (the Quartet) and Kosovo. Others have operated during and after the war in Bosnia and during the Liberia Crisis. Contact Groups are informal, ad hoc groupings that do not require a UN Security Council mandate and can set their own *modus operandi*.

²⁵ See Crisis Group Report, *Nepal's Royal Coup*, op. cit.

²⁶ For a text of the treaty see: http://www.insof.org/treaty/28041960_Sino-Nepalese_Treaty.htm. It provides for an open border, gives citizens the right to work in the other country, and establishes India's right to veto Nepali arms deals with third countries.

India has been reluctant to consider third party mediation between the political forces in Kathmandu and the Maoists, saying this would legitimise the insurgents. But it may be somewhat more amenable to an international role in settling the political dispute in Kathmandu that the king's coup has sharpened.²⁷

U.S. Washington has been a staunch supporter of successive Nepali governments' efforts to tackle the Maoist insurgency and has given the RNA significant military aid. Although criticised as a hawkish backer of a tough security response to the insurgency, the U.S. has long recognised, at least in its rhetoric, that a military solution is impossible. Recent legislation that predates the coup tied its military assistance to better observance of human rights by both the RNA and the government,²⁸ and its response to the king's action has been one of dismay. Its calls for immediate restoration of constitutional freedoms and democratic institutions would be amplified by a united Contact Group.

U.S. reluctance to cut off aid may be driven by a fear that this would only embolden the Maoists but senior officials are aware that military pressure has failed to yield results so far and there is little chance of that changing in the near future. U.S. officials say there is no lethal military equipment in the pipeline for delivery before May or June,²⁹ which gives them a window in which to coordinate policy on this issue with the Indians and British. This is important because Delhi would likely react strongly should Washington move into a vacuum and reduce significantly the RNA's dependence on it for most of its needs.

²⁷ Crisis Group interview with Indian official. New Delhi. January 2005.

²⁸ Section 590 (C) of the omnibus appropriations act passed in December 2004 (P.L. 108-447) provides that: "(2) Funds appropriated under the heading 'Foreign Military Financing Program' may be made available for assistance for Nepal if the Secretary of State reports to the Committees on Appropriations that the Government of Nepal: (A) has determined the number of and is making substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal, including all outstanding orders; (B) is cooperating with the National Human Rights Commission of Nepal to identify and resolve all security related cases involving individuals in government custody; (C) is granting the National Human Rights Commission of Nepal unimpeded access to all places of detention; and (D) is taking effective steps to end torture by security forces and to prosecute members of such forces who are responsible for gross violations of human rights. (3) The Secretary of State may waive the requirements of paragraph (2) if he determines and reports to the Committees on Appropriations that to do so is in the national security interests of the United States".

²⁹ Crisis Group interview, Washington, February 2005.

UK. London's diplomatic ties with Nepal date back to the expansion of the British East India Company in the eighteenth century and have remained close because of the recruitment of Gurkha soldiers and a large aid program. Although the European Union has started to take a more active political interest in Nepal -- as shown by the visit of a high-level troika in mid-December 2004 -- the UK has been much more willing to play a leading role in the international response, especially since it organised an international conference on the conflict in Nepal in 2002. The UK also has good links to Delhi and Washington. The UK has provided some limited military assistance including helicopters but it announced on 22 February 2005 that it is suspending planned delivery of a package of further non-lethal equipment worth £1.34 million.³⁰

The UN. The UN is widely respected in Nepal, which is proud of its reputation as an active member state and contributor of peace-keeping forces, but the world body's large in-country presence has traditionally been heavily development oriented, with the United Nations Development Program (UNDP) as the lead agency. Secretary General Kofi Annan has on several occasions expressed concern about the conflict and offered his good offices in any peace process. The Department of Political Affairs has been monitoring the situation and has built good relations with key political players. High-profile visits by special rapporteurs and the High Commissioner for Human Rights have focused domestic and international attention on urgent problems. But the UN has held back from a more proactive political role in searching for a resolution and has been wary of declaring a humanitarian crisis prematurely. A Contact Group would allow it to contribute expertise in areas such as human rights, humanitarian affairs and conflict resolution.

Other nations. A number of other countries also could play important roles, albeit not within the Contact Group itself. While China is generally not keen to comment directly on Nepal's internal politics, it could use UN participation in the Contact Groups as a channel to exercise indirect influence. The EU and many of its member states, Japan, Canada Norway, Switzerland and Australia are donors and could form a valuable bloc to help the Contact Group maintain momentum. Other members of the South Asian Association for Regional Cooperation would be indirectly represented by the UN and should be pleased to see India engaging in multilateral diplomacy.

³⁰ See footnote 19 above.

D. A REFORM PLAN AND VISION OF THE FUTURE

Nepal is a failing state in no shape to reverse a violent insurgency on its own. The international community needs to help the country reverse the setbacks of the last nine years and put it in a position to negotiate a viable long-term settlement. Rebuilding the state cannot be a matter of resorting to the status quo ante that allowed Nepal to get into this position. There needs to be a forceful and far-sighted agenda for change. Some elements of such an agenda are political steps that could be achieved with little financial cost and would require few state resources. Others will have to be more long term and require, at minimum, a re-direction of international assistance. Some reforms will need to co-opt ideas from the Maoists: this should not be seen as granting concessions to a rebel group but as a sensible way to deal with the deep problems of Nepali society that the insurgency feeds off.

The immediate policy changes demanded of the royal government, such as the restoration of civil liberties and freeing of political prisoners arrested since the coup, must be only the prelude for a wider program of reform. The re-establishment of democratic institutions should be the basis for strengthening the state and restoring the population's faith in it. Elected representatives at all levels are the only means of making administration and governance responsive to people's needs and presenting a political challenge to the Maoists.

The next government must then develop a broad-based political, security and socio-economic strategy to address the insurgency and the underlying issues that have fuelled it. The political challenge will be to sell to Nepal's people a vision of the future that inspires confidence and support. Making this vision reality will require political leadership of a calibre far above that exhibited by recent governments. In the absence of inspirational and capable statesmen and women, Nepal's friends in the international community will have to shoulder much of the responsibility for acting as guardians to a sustained reform process.

No outsiders should dictate the form of Nepal's political institutions, and it is not the case that only one model will work. Nevertheless, certain areas will clearly have to be reformed. The sections below indicate some of the challenges.

1. Constitutional reforms

The 1990 Constitution has created neither a functioning constitutional monarchy nor an effective democracy. A document is needed that removes certain ambiguities about royal power, particularly those centred around

Article 127, which the king has exploited in the past several years to remove prime ministers and justify the current coup.³¹ At the moment the most effective mechanism of constitutional reform would be an agreement among all mainstream parties to reconstitute parliament with a limited mandate to change the constitution to ensure:

- ❑ limited royal powers that do not include the right to oust governments;
- ❑ civilian control over the military;
- ❑ the constitutional primacy of parliament (around which there is currently ambiguity); and
- ❑ greater flexibility to deal with caste and ethnic inequalities.

These changes would do much to undermine the Maoist agenda. The door should be left open for further constitutional change as needed; indeed the parliament might also lay out a timetable for further discussion and revisions over a five or ten- year period.

2. Political Party Reforms

Nepal's political parties have done much to damage support for democracy. Internal reforms are needed urgently if they are to reclaim any of their lost legitimacy. The establishment of a royal commission on corruption provides cover for the king's undermining of democratic leaders but it is the failure of successive governments to control corruption that has made the stick with which they are now being beaten. Carrying out reforms while their very existence is under threat will not be easy but parties will need to:

- ❑ hold free and fair leadership elections (where security will allow) so that members can choose their leaders and possibly bring up a new generation;
- ❑ deliver on public commitments to tackle corruption and cooperate fully with any legitimate judicial investigations;

³¹ Article 127 of the Constitution states: "Power to Remove Difficulties: If any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary orders to remove such difficulty and such orders shall be laid before parliament". The language is imprecise but it is clear that the king has never laid any order before parliament. Rule without elections clearly goes against the spirit and language of the Constitution that states: "We are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people, and therefore, we have from time to time, made known our desire to conduct the government of the country in consonance with the popular will".

- develop, with international assistance, mechanisms to allow greater transparency on party financing, the assets of party leaders and internal promotions; and
- develop mechanisms to make themselves more representative of the wider population, including encouraging greater leadership roles for lower castes (dalits), ethnic minority members and women.

3. Undercutting the Maoist Agenda

It is worth remembering that many of the Maoists' original 40 demands have been accepted by almost all politicians as reasonable.³² If action had been taken earlier to address them -- not least the issues of economic, regional, caste and ethnic disparity which have helped the rebel cause attract recruits -- the insurgency would have been unlikely to gain as much ground as it has. The next government should:

- develop, in consultation with all parties and civil society, an economic blueprint for Nepal, including not only domestic issues such as land reform but measures to regulate and benefit from the growing remittance economy;
- take firm measures to outlaw discrimination on the grounds of caste, ethnicity, gender, regional or linguistic origin, and the like and to develop a cohesive sense of national belonging based on inclusion in political and administrative processes, education and employment, and economic development; and
- reform the judicial system so that people feel they have access to even-handed justice and are no longer tempted to abandon the courts in favour of the Maoists' "people's courts".

4. Effective Security and Human Rights

The RNA has no likelihood of stemming the insurgency as long as people feel trapped between two violent forces. Until it recognises that human rights protection is a central aspect of any counter-insurgency strategy, it stands no chance of reversing the Maoist gains. Its lack of local support and its failure to develop effective intelligence about the Maoists can be linked to its abuses of human rights. It is not enough to point to Maoist violence as a justification for more abuses by the RNA. Priorities include:

- signing and implementing the Human Rights Accord,³³ thus bringing pressure on the Maoists to do the same;
- enabling the National Human Rights Commission to carry out its mandate in full and encouraging it to accept as much UN assistance as necessary to boost domestic capacity; and
- addressing the urgent need for phased security sector reform: apart from the question of civilian control, the military needs to be further professionalised (with, for example, promotion on the basis of ability rather than family ties) and to hand over responsibility for law and order to a strengthened civilian police force that can win the trust of local communities.

If reforms such as these are embarked upon promptly Nepal stands a good chance of facing up to the challenges of the Maoist insurgency and avoiding becoming a "failed state". An approach that recognises and addresses weaknesses in state structures and governance is much more likely to defeat the Maoists politically and build a sustainable future.

IV. CONCLUSION

Although King Gyanendra has said he will bring peace to Nepal, this is unlikely to happen unless his coup is reversed. The Nepali state should be dealing with the insurgency through combined political and security strategies that could bring the Maoists to the table and forge a lasting peace. This will not happen with a military strategy alone. The first steps taken by Nepal and the international community should focus on the political situation in Kathmandu rather than the conflict with the Maoists. Only when a strategy can be agreed on and implemented by all democratic political forces in Kathmandu will talks with the Maoists be possible that stand any chance of success.

This is not the time to adopt a "wait and see" strategy. The 100 days for the king to prove himself being talked of by the U.S. -- which, as noted above, does not have to take decisions on its next round of military aid until May 2005 -- is too long. Every indication is that the situation will deteriorate day by day, and the Maoists will be the prime beneficiaries. The international community has had more than two

³² For the list of Maoist demands see: http://www.insof.org/politics/130299_40demands_Maoist.htm.

³³ The Human Rights Accord was proposed by the National Human Rights Commission in May 2003. Its aim was to get both the government and the insurgents to abide by human rights standards and agree to a monitoring process.

years to conduct a policy toward the king that has essentially been laissez-faire. Since October 2002 it has been waiting for him to deliver results.

But for all the tough rhetoric, the king has presided over a decline in the state's reach and capacity even more precipitous than that managed by several ineffective democratic governments. Waiting longer for the situation to develop will only hasten the growth of a dangerous power vacuum in Kathmandu. If Nepal's friends wish to salvage the prospects of a stable, democratic and prosperous country, the time to act is now.

Kathmandu/Brussels. 24 February 2005

APPENDIX A

MAP OF NEPAL



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