

NEPAL: BACK TO THE GUN

I. OVERVIEW

With the collapse of the ceasefire and peace talks between government and Maoist insurgents, Nepal appears to be in for months more of bloody fighting. There are prospects for eventual resumption of negotiations since neither side can realistically expect a military victory, and there are indications of what a diplomatic compromise might look like. However, the international community needs to urge all sides toward compromise and press the government to restore democracy, bring the political parties back into the picture and control the army's tendency to commit serious abuses when conducting operations. Similarly, the Maoists should discontinue targeted assassinations, bombing and widespread extortion.

The country quickly plunged back into the violence that has killed more than 7,000 people since February 1996. Sharp splits between government negotiators and the Maoists, particularly over a possible constituent assembly to draft a new constitution, led the Maoists to withdraw officially from the ceasefire on 27 August 2003. They marked the end of the ceasefire by shooting two Royal Nepalese Army (RNA) colonels, one fatally, in Kathmandu the next day, and violence quickly erupted across the country. In the weeks following the break down of the ceasefire, more than 500 people have died.

Yet, in many ways, the official end of the ceasefire was almost a formality. Both government and Maoist forces were in regular violation of the code of conduct that was supposed to govern their activities during the halt in fighting, and both sides suspected the other of planning an imminent attack. The Maoists continued to recruit heavily and practice widespread extortion, and fired on a motorcade of former Prime Minister Sher Bahadur Deuba on 26 August 2003. Government forces continued to make their presence felt throughout the countryside, and in what would appear to be a gross violation of international law, summarily executed at

least nineteen individuals they suspected of being Maoists on 17 August 2003 in the eastern village of Doramba, Ramechhap district.¹

As the conflict has resumed, the Maoists appear to be embracing an evolving strategy. Largely moving away from mass attacks on district police and army headquarters, the group has focused on attacks by smaller cells. This has included more widespread urban assassinations of army, police and party officials in an effort to tie security forces down in the cities. The Maoists have also expanded their activities in eastern Nepal and the Terai (the flatlands that border India), areas that had felt the crisis less acutely during earlier periods of fighting. The RNA, having significantly upgraded its firepower and improved base defences during the ceasefire, has claimed a number of successful offensives. Substantiating the battlefield claims of both sides remains difficult.

With both the Maoists and the RNA determined to use battlefield gains to secure leverage for future talks, the danger of a widening conflict are substantial. Further, and despite mounting international pressure for the palace and the political parties to work together, King Gyanendra still appears reluctant to install a genuine all-party government or fully restore the democratic process. Prime Minister Surya Bahadur Thapa has expressed willingness to form such a government, but only under his leadership – a provision that will likely remain a deal-breaker with the main parties.

The return to violence is all the more unfortunate because it is not difficult to imagine a series of agreements around which the king, RNA, political parties and Maoists could coalesce. A number of useful proposals have been put on the table,

¹ See the National Human Rights Commission of Nepal, "Doramba Incident, Ramachap", On the spot Inspection and Report of the Investigation Commission, September 2003.

although far more remains to be done to flesh out the implementation of a reasonable peace deal, and dramatic improvements could be made in the negotiating process itself. It also remains clear that the sooner a genuine multi-party government is established and democracy restored, the higher the chance for a durable solution to the conflict.

II. WHY THE CEASEFIRE BROKE

In many ways, Nepal's seven-month ceasefire ended the way it began. Just three days *before* the ceasefire was announced on 29 January 2003, the Maoists assassinated the Chief of the Armed Police Force, Krishna Mohan Shrestha. Just one day *after* the ceasefire broke down on 27 August 2003 following three rounds of peace talks, the Maoists targeted two RNA colonels in Kathmandu, killing Colonel Kiran Basnet in his home and wounding Colonel Ramindra KC. Colonel Basnet is the highest ranking military official killed to date. Violence has also flared across much of Nepal, including many areas that had largely been spared attacks during earlier fighting.

The breakdown in talks comes almost a year after King Gyanendra essentially suspended Nepal's democratic system.² Public concerns about the suspension of democracy were muted amid high hopes that the palace could deliver a peace deal with the Maoists. Yet, after more than a year of royalist rule, largely fruitless talks, the continuing isolation of political parties and a renewed spate of killings by both sides, hard questions are being asked about the course on which Nepal now finds itself.

The proximate cause of the breakdown in the ceasefire was the Maoists' unwillingness to discuss issues other than the constituent assembly in the third round of peace talks. (In theory, a constituent assembly would gather elected representatives from across Nepal to draft a new constitution.) By most considerations, however, the return to war must be seen as the culmination of a steady erosion in confidence between the Maoists, the royalist government and the largely marginalised political parties. As one Nepalese political scientist bemoaned, "It was obvious that talks would break down", and both the Maoists and the RNA were

clearly preparing for war even as they were speaking of peace.³

For a number of reasons, the Maoists had come to view the constituent assembly as a make or break issue. Several factors drove this perspective. First and foremost, they had come to doubt the sincerity of government negotiators and were concerned by what appeared to be a deliberate go-slow approach. The government's pace did leave much to be desired – it took seven months of negotiations before the government put its first substantive proposals on the table.

From the onset of negotiations, the government appeared to envision that talks would stretch well over a year, allowing it to focus on working with displaced people and restoring local infrastructure. It also hoped to reintegrate Maoist cadres into village life through food-for-work programs. This approach was explicitly endorsed by the donor community. It also seems that the government reasoned that protracted talks would buy sufficient time to bolster the RNA and effectively limit the Maoists' military option.

While this approach may have been quite rational at one level, it had major flaws. First, instead of bringing the mainstream parties along, the palace deliberately sought to marginalise them. As one journalist commented, "The king has made up his mind. He will solve the Maoist problem first and then deal with the parties".⁴ The code of conduct did not mention the parties at all, and over time, they began to view street protests as their only outlet to protect their interests.

Further, the government appeared to miscalculate badly the strains that protracted talks would place upon the Maoists. The insurgents' ability to engage in rather leisurely discussions with the monarchy they had long hoped to abolish was limited. As one Western diplomatic official noted of the Maoists, "They had to keep *dal bhat* in the stomachs of their cadres".⁵ Local commanders were unhappy with the peace process, and given the difficulty of sustaining an active guerrilla force in the field, the Maoists viewed a go-slow approach as a deliberate attempt to sap their military strength. Not surprisingly, after

² See ICG Asia Report N°50, *Nepal Backgrounder: Ceasefire or Strategic Pause?*, 10 April 2003, for a fuller discussion of the constitutionality of the king's dismissal of Prime Minister Deuba on 4 October 2002.

³ ICG interview, Kathmandu, 22 September 2003.

⁴ ICG interview, Patan, 19 September 2003.

⁵ ICG interview, Kathmandu, 19 September. *Dal Bhat* is the Nepalese national dish, consisting of rice and lentils.

seven months of talks, the Maoists were eager to push explicitly political issues such as the constituent assembly up on the agenda. “They know an elongated peace process is a trap”, one diplomat commented.⁶

The government’s decision to backtrack from its agreement during the second round of talks on 9 May 2003 to limit the RNA to a five-kilometre range from its bases during the ceasefire also soured the environment. (The decision to jettison the five-kilometre limit appears to have been largely driven by the RNA, which was not consulted when the proposal was offered and had legitimate security concerns about essentially giving the Maoists free rein in the countryside.) In retrospect, this also would appear to mark the point from which the RNA has taken a much more active role both in talks and public life generally. A journalist argued that the RNA is now more influential than ever, and “has become a powerful political force”.⁷ Some maintain that it now has a de facto veto over any prime minister the king might choose, leading one local political scientist to comment, “The military has tasted power, and it is very dangerous for a country like this”.⁸

The replacement of its entire negotiating team when Prime Minister Lokendra Chand stepped down on 30 May 2003 and was followed by Surya Bahadur Thapa further added to the perception that the government was dithering. The king’s unwillingness to appoint an all-party government after Chand’s resignation – even after the main political parties jointly proposed the Unified-Marxist Leninist (UML) general secretary, Madhav Kumar Nepal, to head it – sharpened doubts among both the Maoists and the political parties that the king was sincere about power sharing.

The lack of progress in the talks fuelled increasing restiveness among Maoist hardliners and many rural cadres. While decision-making within the politburo remains opaque, differences, but not splits, appeared to open up among the leadership as the third round of talks loomed.⁹ According to some accounts, the chief Maoist negotiator, Dr Baburam Bhattarai, and

a number of rural commanders pushed to end the talks, while part of the politburo, including Pushpa Kamal Dahal (*nom de guerre* Prachanda) and the military chief, Ram Bahadur Thapa, felt they were making inroads in expanding their political base around the country and favoured remaining at the table. The alleged compromise was to make the take-it or leave-it proposal for a constituent assembly. That assembly has always been a bedrock Maoist demand so it is no surprise that the politburo and rural cadres could rally around such a position.

When the government presented a position paper at the third round that offered substantial reforms that could be constitutional amendments but not a constituent assembly, things quickly fell apart. Maoist leader Prachanda claimed that those “not only failed to address the basic problems facing the country, it proved their conspiracy to strengthen the feudal retrogression of 4 October with reformist sugar coating”.¹⁰ The government position paper may well have been a good jumping off point for dialogue in February or March 2003, but by August the Maoists saw it as further proof of government stonewalling. While they left the door open to future talks, as did the government, what had been a promising window for peace quickly slammed shut.¹¹

A. EROSION OF CONFIDENCE

In many ways, the slide toward conflict followed an all-too-predictable path. The RNA and the Maoists were never able to develop effective mechanisms for monitoring and verifying the “code of conduct” they had agreed would govern their behaviour during the

⁶ ICG interview, Kathmandu, 18 September 2003.

⁷ ICG interview 19 September 2003.

⁸ ICG interview, Kathmandu, 22 September 2003.

⁹ This analysis is based upon ICG interviews with a range of commentators and officials, including individuals familiar with the thinking of senior Maoist leaders.

¹⁰ Communist Party of Nepal (Maoist), “Statement by Comrade Prachanda”, Revolutionary Worker #1212, 14 September 2003.

¹¹ Why the Maoists have remained so insistent on a constituent assembly instead of accepting the concept of amending the constitution or negotiating specific reforms with the government and other political parties is a legitimate question with no definitive answer. In addition to the tactical elements described above, they take the position that the 1990 constitution is defunct and therefore not a proper subject of mere amendment. They presumably also believe they can achieve more sweeping changes to their liking in an assembly that would presumably have representatives of more social groupings and be less tightly structured than a diplomatic conference. For a more detailed considerations of these matters, see ICG Asia Report N°57, *Nepal: Obstacles to Peace*, 17 June 2003, in particular section II, “Constitutional Considerations”, pp. 11 and following.

ceasefire.¹² The lack of an influential guarantor to help referee the code was one reason the crisis in confidence grew so severe. A facilitator at the talks observed, “From the very beginning, the Maoists were complaining about the government, and the government was complaining about the Maoists”.¹³ Mutual suspicion was pervasive.

The RNA felt the Maoists were using the ceasefire to smuggle arms, expand recruiting, intensify extortion and plan new attacks. There continue to be credible reports that the Maoists employ child soldiers and forcibly recruit. Maoist support for pan-revolutionary causes such as the Revolutionary International Movement (RIM), a loose coalition of communist guerrilla groups and insurgencies across South Asia and beyond, have made some observers question the genuineness of their commitment to both peace and democracy. The failure of the Maoists to articulate their vision for how a constituent assembly would be conducted – what some have called an “agree and we will tell you” approach – also raised questions about their ultimate intentions. One journalist maintained that the Maoist leadership remained essentially beholden to its cadres, “and didn’t have the courage to tell the cadres that the war can’t be won”.¹⁴

The Maoists had equally serious concerns about their opponents. The RNA and police resisted being restricted to their barracks, and the second team of negotiators, headed by Communications Minister Thapa, took a harder line than its predecessor, led by Physical Planning Minister Colonel Narayan Singh Pun. As one diplomatic observer commented, the new negotiators saw the confidence building measures established under Prime Minister Chand as “one-sided concessions where the Maoists got away with murder”.¹⁵ The RNA and the palace appeared to believe that the Maoists would simply lay down their guns as a deal got closer and did not work to establish a credible demobilisation process linked to substantive talks. The Maoists were also deeply concerned by a steady flow of foreign military assistance to the government, their appearance on the U.S. State Department Terrorist Watch List,¹⁶ the

king’s unwillingness to meet directly, and growing unrest among their cadres.

Both sides sought to maximise their gains during the ceasefire. The Maoists expanded their financial base and got more and more people to talk seriously about potentially embracing a constituent assembly. In a major concession, the government freed more than 100 Maoists from prison – cadres who are again fighting government forces. The Maoists also expanded recruitment in eastern Nepal and the Terai, and worked to harness the energy of disaffected groups in these areas. A civil society activist noted, “The Maoists were successful in their mission, they got senior leaders out of prison, collected more money, had court cases dropped and reorganised”.¹⁷

The RNA also used the ceasefire productively. It significantly improved the defences of its bases, making the high-profile attacks that marked the previous phase of the war far more difficult. With much improved fire power, some air capabilities and a new focus on field intelligence capabilities, it is in a far better position to engage in direct confrontations.

A diplomat commented, “On the ground, the ceasefire was essentially over. The RNA was stung by the five-kilometre imbroglio, and was much more aggressive in asserting where it could go”.¹⁸ This included setting up army health camps for the public, a step the Maoists viewed as a provocation and that led to a series of clashes. One journalist argued that it had become clear “the army detests the ceasefire”.¹⁹ Code of conduct violations by one side or the other became almost daily occurrences, and mutual suspicions reached a fever pitch. Both the RNA and the Maoists appeared sincerely to believe that the other was preparing for attack.

B. DORAMBA AND DEUBA

The lack of confidence among the Maoists manifested itself in calls to have provisional agreements reached in the second round of talks implemented before initiating a third round. In late July 2003, the Maoists closed a liaison office in Kathmandu, and leaders quite publicly returned to the underground.

¹² For the full text of the code, see ICG Asia Report N°57, *Nepal: Obstacles to Peace*, 17 June 2003.

¹³ ICG interview, Kathmandu, 21 September 2003.

¹⁴ ICG interview, Kathmandu, 21 September 2003.

¹⁵ ICG interview, Kathmandu, 17 September 2003.

¹⁶ U.S. State Department, “Patterns of Global Terrorism”, at <http://state.gov/s/ct/rls/pgtrpt/2002>.

¹⁷ ICG interview, Kathmandu, 18 September 2003.

¹⁸ ICG interview, Kathmandu, 18 September 2003.

¹⁹ ICG interview, Kathmandu, 21 September 2003.

The government's lack of confidence manifested itself in unwillingness to present a substantive position, increasingly hard-line language, and a very messy political situation in Kathmandu. As the peace process started to fray, and the political parties became more active in their agitation, the royalist government increasingly fell back on ad hoc solutions. One Western diplomat commented that while the Maoists "seemed sincere earlier", hopes for progress dissipated amid "the mess of the second round of talks and change of government".²⁰ However, others questioned whether the Maoists were ever serious about the talks.

The most disturbing security incident came on 17 August 2003 as the third round of talks began in Nepalganj. It should stand as a stark warning to both the international community and the Nepalese on the dangers of protracted conflict. By most accounts, a raid in Doramba conducted by over 60 RNA troops captured twenty individuals in a house, of whom eighteen were affiliated with the Maoists, and two lived there.²¹ Whether these were actually Maoist fighters remains in dispute – there are credible suggestions that the group was gathered for a wedding. The RNA unit led the detainees out of the village and marched them for several hours. Nineteen were then shot and their bodies – most with hands still bound – were pushed off the side of the steep trail, in what one who investigated the scene said could only be described as "summary executions".²² One woman remains missing.

It will be difficult to ascertain definitively whether this was the action of a rogue commander or was sanctioned by the RNA command. But it strains credibility that on the very day peace talks reconvened, a local commander in charge of a sizable operation would take extreme measures that obviously could effectively end the ceasefire without any authority.

It is also troubling that the incident has not generated a greater public outcry. While the Human Rights Commission released fairly tough findings, donors, NGOs and the press seemed almost to downplay the

matter. Doramba also calls into question the efficacy of international military assistance to and training of the RNA. Donors have always insisted that training, including human rights training, was a vital part of military aid. The argument was that by engaging with the RNA, the international community would have a better chance of modifying its behaviour. If the military does not fully account for its actions at Doramba and prosecute any individuals who committed crimes, the international community should conclude that it is inappropriate to provide current levels of military assistance to an undemocratic government in an increasingly dirty war.

Doramba left the Maoists deeply angry, and the third round of talks was largely stillborn. On 26 August 2003, the Maoists fired upon the motorcade of former Prime Minister Deuba in Kailali. Deuba was unhurt. The attack made little sense – his party has been one of the few to support a constituent assembly – and called into question Maoist control of some local commanders.

The next day the Maoists announced their unilateral withdrawal from the ceasefire.

C. A NOTE ON PROCESS

The three rounds of talks during 2003, much like the talks conducted under Deuba between August and November 2001, were poorly run from a technical standpoint. The process was often chaotic; mediators and negotiators appeared to lack training; there was no real secretariat; and international technical support for it as well as monitoring of the ceasefire was extremely limited. In a number of instances, the government team appeared to work at cross purposes, and competing press conferences seemed to get as much weight as the substance of negotiations. However, the Thapa team of government negotiators gets higher marks for professionalism than its predecessor, and the atmosphere at the talks was said generally to be quite cordial.

Having facilitators who are almost directly aligned with the sides (two facilitators were viewed as tilting Maoist, two as being loyal royalists) may not be the best idea. The government informed the facilitators by letter after the collapse that any future talks will be "arranged in a new manner" with some overhaul of the facilitation team.

A number of individuals close to the talks observed that the Maoists were concerned that government

²⁰ ICG interview, Kathmandu, 17 September 2003.

²¹ See the National Human Rights Commission of Nepal, "Doramba Incident, Ramachap", op. cit.

²² A senior member of the diplomatic community and a National Human Rights Commission investigation team member used this identical language in describing the incident to ICG during September 2003 interviews.

negotiators were a somewhat selective conduit of information to and from the palace, in a situation where “the king was just behind the screen”.²³ In a secret meeting between Maoist officials and the government before the third round, Baburam Bhattarai allegedly sought clarification on the king’s role and was assured that he was fully in charge and willing to embrace progressive changes.

The confusion over decision-making authority prompted repeated calls by the Maoists for the RNA and the king to declare that any agreement reached at the negotiating table would be binding. This underscores the need for government negotiators to have plenipotentiary powers so that decisions made at the table actually represent a deal. There may also be reason for King Gyanendra himself to engage in negotiations directly with the Maoists and the political parties. He has said that a direct meeting with the Maoists is “not impossible”, although he also downplayed his own significant hand in government saying, “A government with executive powers is involved in negotiations, and it will decide. A constitutional monarch need not meet them and make decisions”.²⁴

The Maoists might also wish to take a hard look at their own diplomatic representation. A source close to the talks noted of Dr. Bhattarai, “He doesn’t have a great understanding of compromise”.²⁵ A journalist echoed this and maintained, “For Baburam Bhattarai, compromise is a sign of weakness”.²⁶

In many respects, the government failed to take advantage of seven months of ceasefire other than to bolster its military capabilities. Beyond controversial army health camps, it delivered little assistance to conflict affected areas. This highlights the difficulties of keeping the governance of Nepal frozen as the royalist government and democratic political parties steadily work to undercut each other.

India continues to resist all but the mildest forms of international engagement with the conflict. And, as one international official said of its influence on outside mediation or negotiation, “If they don’t want it to happen, it won’t”. However, there may be some willingness from Delhi to concur in international

help for establishing a secretariat or the provision of specific and low-key expertise during future talks.²⁷

III. THE EVOLVING NATURE OF THE CONFLICT

As fighting has resumed, it has become clear that its nature has significantly changed. The Maoists are attacking on more fronts, in a more diffuse fashion, and looking to keep the RNA and police off-balance and on the defensive. The RNA hopes to use improved training, an upgraded arsenal and a revamped approach to intelligence to inflict heavy casualties. That more than 500 have died since the ceasefire ended, including a relative lull during the *Dashain* holiday, would seem to indicate that the lethality of the conflict escalates the longer it lasts.

A Nepalese NGO official noted, “The Maoists changed their whole strategy of war; they can’t attack district headquarters anymore”.²⁸ This observer argued that the Maoist leadership, although receiving extensive press coverage from them, viewed attacks on army and police headquarters as of limited utility and increasingly costly in casualties.

The Maoists have chosen targets more selectively, while largely avoiding large mobilisations. In an effort to limit their own casualties, they have moved to more hit and run attacks organised by small cells of two or three. On 7 September 2003, six separate bomb blasts hit Kathmandu, wounding about a dozen people and killing a twelve-year old boy.²⁹ Some appeared to be relatively sophisticated, and RNA officials indicated that the Maoists are using more remote control devices triggered by cell phones and pagers. The bombs came on the heels of the aforementioned shooting of two RNA colonels in Kathmandu.

In addition, the Maoists conducted a three-day general strike (*bandh*), 18-20 September, which was widely observed and largely peaceful. The Maoists have also launched a wave of bank robberies and destroyed the houses of a number of government and political officials. On 22 September they shot a sub-

²³ ICG interview, Kathmandu, 21 September 2003.

²⁴ *Nepal Magazine*, 18 August-1 September 2003.

²⁵ ICG interview, Kathmandu, 17 September 2003.

²⁶ ICG interview, Patan, 19 September 2003.

²⁷ This indication comes from multiple discussions with members of the Indian diplomatic community in Nepal and elsewhere, as well as from other international representatives in Kathmandu.

²⁸ ICG interview, Kathmandu, 17 September 2003.

²⁹ *Kathmandu Post*, 8 September 2003.

inspector of police in Kathmandu. An international security expert noted, "The Maoists are able to attack where and when they want".³⁰ The RNA is still fairly slow to respond. Often the perpetrators are long gone by the time the army or police arrive.

Maoist officials insist that unless the government offers peaceful and forward-looking solutions to the conflict, they will begin what Baburam Bhattarai calls "the preparatory stage of transition from strategic equilibrium to strategic offensive".³¹ Bhattarai contended that:

Some isolated incidents of unintended death of civilians in legitimate sabotage actions or capital punishment to certain individuals in recent weeks have been highly exaggerated by the genocidal monarchical state and a section of the media, but this does not reflect any fundamental change in the military strategy of the party.³²

The Maoists have also sharply increased attacks in the Terai and eastern Nepal, having successfully expanded recruitment in these areas during the ceasefire. There appears to have been a particular effort to reach out to the Mahadesi in the Terai, a group that has long operated on the margins of society and suffers widespread discrimination. Increased activity in these areas also opens up new sources of extortion for the Maoists. Their efforts to secure financial support in parts of the desperately poor western and mid-western regions – where many banks have been repeatedly robbed – must encounter something of a law of diminishing returns.

The Maoists still do not appear to believe that an all-out military victory is possible, particularly with international actors such as India, the U.S., China and the UK willing to prevent such an outcome. Instead, a medium intensity conflict would seem to fulfil a number of their needs: it convinces the cadres that their leadership has not "gone soft", and it keeps pressure on the military and the political establishment to accede to their demands without burning all bridges.

However, the strategy of urban assassination carries significant risks, since many in the international arena

are more likely to view such actions as terrorism, even if they are directed against military targets. Maoists continue to feel that violence has helped them achieve greater international recognition and a more say in discussions of Nepal's future. However, they may have dangerously misread the relative impunity they enjoyed after the January 2003 assassination of the chief of the armed police. There will likely be a point of no return for the Maoists if they are widely perceived internationally as a terrorist organisation.

The Maoists are clearly aiming for a magnified psychological impact in Kathmandu, and in some regards this is working. The assassinations have sent a chill of concern into the capital's elite: generals are increasingly sleeping on their bases, and politicians have taken measures to improve their security. The Maoists may reason that by amplifying pressure in Kathmandu, the public and elites will be more eager to accept a constituent assembly. There is a palpable sense of tension among many Nepalese whose lives had largely been untouched by the earlier fighting. An NGO official argued that the new strategy is "clearly alienating the middle class in the cities", but that this is not a group the Maoists have considered crucial to their agenda.³³

There seem to be two views of the targeted killings in urban areas: it could make the political and economic elites more eager to compromise and give in on the constituent assembly (a position to which they were drifting even before the ceasefire broke down); or it could cause them to dig in their heels and support a more sweeping military approach against Maoist forces.

Already in control of significant parts of the countryside, the Maoists hope to keep the military tied down in the cities and limit its mobility. They may also be seeking to dominate a number of more rural districts in order to develop a rump government more fully. According to knowledgeable security officials, some 400 police have already been withdrawn into the Kathmandu valley, where more than 50 per cent of the security services are now stationed. This leaves the army spread quite thin for waging a traditional counter insurgency campaign.

The emerging Maoist strategy also has given local commanders greater authority to decide who should be targeted for violence and extortion. This is a worrying trend, in that less central discipline over

³⁰ ICG interview, Kathmandu, 19 September 2003.

³¹ Correspondence with ICG, 26 September 2003.

³² Ibid.

³³ ICG interview, Kathmandu, 22 September 2003.

such decisions often leads to greater violence driven by local vendettas. Indeed, there are already increasing reports of greater violence used not for political reasons, but simply because individuals refused to comply with extortion requests. This may well be a problem of a guerrilla organisation growing in size, where “more killings [are] not based on politics but just because of donations”, as one NGO official explained.³⁴ There are also more reports of NGOs being harassed in the field, even those which have had an established relationship with the Maoists.

The RNA may be falsely reading the shifting nature of the conflict as a victory. Lt. Colonel Kaji Bahadur Khattri argued in a late September press conference that the Maoists’ shifting strategy reflected weakness and disorganisation and that RNA firepower far outmatched that of the poorly armed insurgents. He said, “they have not been able to give a good fight to the army”.³⁵ Yet, the pace of casualties has been as high as at any period of the war. The RNA has greatly upgraded the defensive perimeter of its bases with mines and other measures,³⁶ and the Maoists’ may no longer feel comfortable fighting toe-to-toe. But there is no reason they have to. An international expert observed, “The RNA is prepared for what they did, not what they are doing”.

The government and Maoists have engaged in claims and counterclaims with regard to casualties. For example, RNA officials claimed to have killed 45 Maoists during a single encounter in Rolpa while losing six of their own men and one policeman. In contrast, the Maoists claimed they had only lost seven while killing twenty RNA and police.³⁷ Similarly, a Maoist press release claimed that cadres had killed as many as 41 RNA on 15 September in an ambush in the far western district of Kailali while suffering far fewer casualties. This was disputed by the RNA. It is very hard to tell exactly who is getting killed at this point.

Anti-Maoist sentiment and institutional pride within the RNA have grown more intense with the assassination attempts in Kathmandu. This is the first war the RNA has ever really fought, and there are many in its senior ranks who want to ensure that it can only be regarded as a victory. A journalist

argued that “The RNA has been humiliated and wants to wash itself clean” after incidents such as Dang where it suffered heavy losses earlier in the war.³⁸ By almost all accounts, the RNA is stronger and ready to escalate violence.

Some within the RNA appear to feel that a military solution is now possible with its new equipment and training, although incidents such as Doramba raise doubts about how an intensified campaign would be conducted. Diplomats have made clear to the government that military excesses could endanger support, and there are some reports that the RNA is doing slightly better at limiting what were extraordinarily high civilian casualties. However, many Nepalese remain deeply concerned by what they see as general unprofessionalism in RNA operations.

There continues to be a curfew on most of the country beyond Kathmandu’s ring road, and the government has again declared the Maoists a terrorist organisation. While a state of emergency has not been declared, the government and the RNA have few checks on their power. Whether the Maoists can mount spectacular attacks in Kathmandu remains to be seen, but the capital is not known for airtight security. The conflict continues to place a serious burden on Nepal’s economy, with tourism revenues again sinking. Growing numbers, having fled their villages, are now concentrated in Kathmandu. While the violence may have resumed with both sides hoping merely to give the other a bloody nose before returning to talks, its level may make the situation hard to bring under control. As one source close to the talks complained, “In the name of pressure, both sides will let thousands more die”.³⁹

IV. THE ROLE OF THE PARTIES

That the royalist government continues to hold democracy and mainstream political parties at arm’s length has only made achieving peace more difficult. Even though the war has resumed, the capital remains consumed with political manoeuvring amid an environment of deep distrust. Political parties, shut out of power for more than a year, continue to reason that keeping pressure on the government is

³⁴ ICG interview, Kathmandu, 22 September 2003.

³⁵ See *The Kathmandu Post*, *Kantipur* and *Himalayan Times*, 24 September 2003.

³⁶ ICG interview, Patan, 19 September 2003.

³⁷ *The Himalayan Times* 19 September 2003.

³⁸ ICG interview, Kathmandu, 21 September 2003. After the break down in talks in 2001, the Maoists simultaneously attacked an army barracks in Dang and a police post in Syangja killing fourteen soldiers and 37 police.

³⁹ ICG interview, Kathmandu, September 2003.

their only viable option. While the palace continues to say the right things about democracy, including recent suggestions that it would like to see the democratic process restored at the local level, its actions have often lagged behind its rhetoric as concerns mount that the king is interested in maintaining a quasi-authoritarian role.

The end of the ceasefire did bring important developments to the ongoing protests by the political parties designed to force the king to restore parliament or name an all-party government. The parties had hoped that a large rally long scheduled for 4 September 2003 would provide a decisive push against the sitting royalist government. Major players in the diplomatic community, including India, the UK, U.S., China and Pakistan, were alarmed that demonstrations so soon after the breakdown of the ceasefire could quickly spin out of control. Both embassies and the palace appeared quite concerned that a mass rally could further destabilise the situation and open the door to potential Maoist manipulation of street protests. Fears that a tense situation in the streets could trigger widespread violence or a major government crackdown appeared to be justified.

This is one of the first times that the above named countries have taken a common position. All called for the “constitutional forces” (the palace and the political parties) to work together and take a joint position to help restore peace and democracy. They also stressed that they would like to see the king institute an all-party government as an important step in moving the process forward, although it remains unclear how much genuine pressure has been applied. As a result of international pressure and threats of a government crackdown, the parties substantially scaled back the 4 September events, and what once was billed as a “decisive battle against” political regression, quickly became a far smaller face-saving protest.

This unprecedented display of international cohesion sparked much local press rhetoric about foreign meddling. However, given the substantial aid provided by donors, it is not unreasonable that diplomats would try to make their voices heard. One analyst argued that the front is “an alliance of convenience and self-interest; all have specific reasons why further upheaval in Nepal is not in their long term interests. They want neither to get sucked

in nor to see Nepal go under”.⁴⁰ Such heightened engagement in the domestic situation makes it all the more imperative that the international community get its policy right.

Mainstream political parties continue to express concerns that some members of the international community simply want them to play along as the palace sets the agenda and question whether genuine pressure is being put on the monarch to restore democracy. A measure of scepticism is understandable. For a year, the king has been reluctant either to appoint an all-party government or restore the suspended parliament. He continues to sit at the apex of a government that is unconstitutional by all reasonable standards, and he frequently seems to take a “divide and conquer” approach to dealing with the parties.

When the ceasefire broke down, the king and the international community were displayed new eagerness to present the sitting government as a “constitutional force”, but it is not difficult to see why party leaders have little trust in the monarchy. “The king had the benefit of the doubt after [dismissing Prime Minister] Deuba, mainly because the situation was so bad”, argued a journalist, “but now with the ceasefire off and the country back in a spiral of violence, he has to do something to get back his legitimacy”.⁴¹

Until the king either establishes an all-party government or restores parliament, it will remain quite difficult to accept the royalist government as constitutional. The king and the prime minister, in messages over the *Dashain* holiday, spoke of restoring democracy, with a particular emphasis on local elections. However, yet again, the impression left was distinctly that democracy is a matter for the future. Prime Minister Thapa argued that elections were the only acceptable means to restore the parliament but stressed that a minimum atmosphere of security would have to exist first.⁴² There is a Catch-22 aspect about this: it will be difficult to restore stability and security while the parties continue to feel alienated, but the government does not want to hold elections until calm is restored.

Prime Minister Thapa has also emphasised restoring local government bodies. This preference for local

⁴⁰ ICG interview, Kathmandu, 22 September 2003.

⁴¹ ICG interview, Kathmandu, 19 September

⁴² *The Himalayan Times*, 6 October 2003.

governance has some shades of the earlier *panchayat*, or partyless, era of royal rule before 1990 where democracy was largely tolerated only in name. UML party leader Madhav Kumar Nepal argued:

The experiences of the last one year have shown that the country cannot move without the participation of the political parties. Parties should be given the right to choose the prime minister and ministers. In the 21st century, it is not in the interest of monarchy to get involved in controversy.⁴³

One Nepalese NGO complained about the diplomatic community, “They made the protestors work with the government; why doesn’t the international community tell the king he needs to return to a ceremonial role”?⁴⁴ Yet, King Gyanendra has made quite clear that he sees his position as more than ceremonial. While he says an “active monarchy is not reasonable” in the 21st century, he has voiced his support for:

...a constructive monarchy that, remaining within the constitution, performs its duty toward the people....The country should not have a situation where people from different professions, religions, shades of opinion and customs are driven to frustration, and because there is no one to redress their grievances, they are forced to rebel.⁴⁵

The notion that the king would be in a meaningful position to address what he sees as the grievances of the people suggests that he envisions a reasonably active role for himself in the governance of the state. Equally clearly, the current situation – where the king is able to appoint and dismiss prime ministers at will – gives the monarch not only an active role, but an overarching one. While the diplomatic community in Kathmandu remains coy, there is also a sense of growing frustration toward the king.

The palace, including some relatively hard-line advisors, still appears to prefer dealing with the Maoists first and address the role of the parties and democracy as a whole subsequently. Parties would only be brought in during a roundtable phase that would also bring together the Maoists, the

government, and a wide range of social groups. This would essentially freeze democratic actors out of the process until after a deal was signed – an approach that seems to be regarded almost universally as ill-conceived. One diplomat commented that the refusal to accept a common candidate from the political parties “exposed the king’s charade for what it was: an effort to keep the foreign community quiet”.⁴⁶

It can be argued that there has been an over-emphasis on talks with the Maoists and an under-emphasis on sorting out the overall political situation. While restoring democracy is obviously not a panacea (the war started during democratic rule), it is difficult to imagine crafting a viable peace deal that would include major constitutional revisions without the democratic forces at the table. It is also true that the parties appear willing to work with the king to a certain degree, largely because they have no alternative.

The king and prime minister have both expressed a willingness to form an all-party government under Prime Minister Thapa – the king’s hand-picked political leader. This seems to be a fundamental misreading of what an all-party government would represent. Efforts to pull the UML or another party into the government under Thapa have enjoyed limited success, and such a veneer of democracy would do little to stabilise the general situation. If a single major party was to break ranks and join the Thapa government, it would also likely make it a magnet for verbal and physical attacks. For example, if the UML were to join, it would likely be targeted by the Maoists while being derided by Congress and others as having sold out. Such fundamental calculations should not be lost on the palace.

In many ways, the king has dwindling options. Moving from quick-fix to quick-fix to tamp down street protests is not sustainable. Repetition of the game of musical chairs that would accompany yet another switch in royalist prime ministers have limited utility. Disturbingly, murmurs are increasing in Kathmandu that the king is interested in sterner measures. One journalist noted, “If the government cannot control the situation, it will have several possible choices, and we hear rumours that an emergency will be declared soon”.⁴⁷

⁴³ *Spotlight*, “This Country Cannot Bear the Conflict and Confrontation for Long”, Vol. 23, No. 14, 26 September-2 October 2003.

⁴⁴ ICG interview, Kathmandu, 22 September 2003.

⁴⁵ *Nepal Magazine*, 18 August-1 September 2003.

⁴⁶ ICG interview, Kathmandu, 17 September.

⁴⁷ ICG interview, Kathmandu, 21 September 2003.

As long as the parties and the palace refuse to work together constructively, and the palace treats the democratic process as little more than a sidebar, the Maoists will continue to exploit the tumult.

V. HOW FAR APART?

The breakdown in talks between the government and the Maoists and the generally poor handling of them have obscured the fact that the differences between government, Maoists and political parties are bridgeable.

In April 2003, the Maoists presented a position paper to the government that included both broad and quite specific demands.⁴⁸ The Maoists called for clarification on and release of prisoners of war, withdrawal of court cases against cadres, repeal of the Terrorist and Destructive Activities Act, return by the RNA to barracks and a committee to monitor the code of conduct. Consistent with their position during talks in 2001, they called for a roundtable conference including “democratic, patriotic and leftist forces which have a proved popular base”, an interim constitution and interim government by the roundtable conference, elections under the interim government to establish a constituent assembly with broad social representation, and the drafting of a new constitution by the constituent assembly. The Maoists also proposed merger of the RNA and their forces, a secular country, repeal of the 1950 India-Nepal treaty and a number of other positions related to economic and social questions.

Insistence on a constituent assembly has scant roots in traditional Marxist ideology. The Maoists have been adamantly reluctant to articulate the details of such an assembly. As one mediator observed, there needs to be a “detailed discussion on how to elect assembly members, draft a constitution and see that it is passed”.⁴⁹ For an issue that has twice derailed talks, it is striking how little anyone seems to know about how a constituent assembly would actually work in practice. Certainly, security would be central to how any constituent assembly would be implemented, and the parties, the Maoists and the government all have apprehensions that the process could be manipulated by the others.

An open-ended process poses existential threats to each actor: the parties fear they could be squeezed out as armed Maoists and armed government forces turn back the democratic rights secured in 1990; the king fears a republic could be established and end his reign; and the Maoists, who have not participated in elections since the early 1990s, fear they could be far less popular than they imagine.

The Maoists’ negotiator, Baburam Bhattarai, argued:

This round-table conference should work out an interim constitution, form an interim government and decide on all relevant issues necessary for a free and fair election to the constituent assembly, including the interim security mechanism. And finally, the interim government should hold a free and fair election to the constituent assembly within a stipulated time, preferably six months...Of course, different political forces would be free to put forward their separate agenda on varied questions like the fate of the monarchy, but should abide by the decision of the constituent assembly. This was, in brief, our minimum political agenda proposed at the recent peace negotiations, which was rejected by the royalist regime leading to the ultimate breakdown of negotiations and ceasefire.⁵⁰

A number of foreign diplomats publicly praised the position paper the government presented at the third round in August 2003 as a response to the paper forwarded by the Maoists in April. This was quickly viewed by the Maoists as further evidence that the international community was in bed with the monarchy. A Nepalese NGO official also argued that international support for the position paper “was not appropriate at that time” and created the impression among the Maoists and the others that it had been jointly prepared by the king and foreign governments.⁵¹

That said, the paper was progressive in many regards, although it side stepped several major issues. It largely glossed over the current messy state of affairs and resisted any suggestion that the government was in power by unconstitutional means. Instead, the paper maintained:

⁴⁸ For the full text of these demands, see Depak Thapa, *A Kingdom under Siege: Nepal’s Maoists Insurgency, 1996 to 2003* (Kathmandu, 2003).

⁴⁹ ICG interview, Kathmandu, 21 September 2003.

⁵⁰ Correspondence with ICG, 26 September 2003.

⁵¹ ICG interview, Kathmandu, 17 September 2003.

In spite of certain inconsistencies and obstacles in the implementation of some constitutional provisions, the constitution is alive and functional to date as an excellent document in view of the democratic values and norms.⁵²

The government's position included a number of major accommodations, largely on the social front, and called for the constitutional monarchy and multi-party democracy to be the bedrock of governance. Prospective reforms included: establishing neutral governments three months before general elections; proportional representation; restructuring of the upper house to include more groups that have traditionally suffered discrimination; reserving 25 per cent of all seats in representative institutions for women; special provisions for reserving positions for discriminated groups in education, health and employment; broader use of local languages in local government; and referendums for issues of national importance.

The roadmap for the peace process detailed by the royalist government went as follows: negotiations with the Maoists to reach consensus on "objectives, contents and process" for reforms; a roundtable conference including the political parties designed to produce a national consensus; formation of an interim electoral government including the Maoists; parliamentary elections; and, lastly, constitutional amendment. Several issues were notable by their absence. The government offered a roundtable conference, but no constituent assembly. Control of the RNA – an issue of increasing importance to both the parties and the Maoists the longer the conflict has ground on – was pushed to the side, as was any suggestion that the monarchy's powers might be diminished. The paper also stressed that "the issue of handing over of the arms and ammunitions lying with the Maoists side should be one of the important items of the agenda of the negotiations".

Both sides continue to focus most closely on the power issues, and despite the lofty rhetoric they use with regard to minority groups and social issues,

control of the government is the main point of contention. One NGO official observed that the Maoists "are not fighting for minority rights, they are fighting for power".⁵³ A Western diplomat maintained, "The Maoists did not have any great quarrel with what was in the paper, it was some things that are not".⁵⁴

The issue then becomes the best arrangement that would allow both Maoists and royalist government to save a measure of face while ensuring that the peace process actually does broadly respect the rights of Nepalese and restore the democratic process. Ensuring that the parties are represented at the talks is essential. The Maoists have given repeated signals that they would be willing to accept the continued existence of the monarchy, as long as the king was relegated to a far more ceremonial role. However, a Nepalese political scientist argued that while the Maoists may be more conciliatory than their public tone would suggest, "there would be a major split in the party" if they accepted something short of a constituent assembly.⁵⁵

The government has also shown some flexibility. "When you listen to the government team, it all sounds quite reasonable. They are willing to discuss any subject, even the monarchy", said a party close to the talks.⁵⁶ The royalist government appears to be willing to deal with the status of the monarchy and the RNA as long as this is within the more controlled confines of a constitutional amendment.

It would clearly be useful if the parties, royalist government and the Maoists could reach understandings about the ultimate contours of a peace agreement and basic constitutional principles while agreeing also on some process that gave the Maoists rhetorical cover with their cadres to claim that a constituent assembly had been secured. Baburam Bhattarai rather cleverly leaves the door open to such an approach even though insisting that a full constituent assembly is the only way forward:

...any idea of "partial sovereignty" to the people is fraught with immense loopholes and danger to democracy. Attaching any "precondition" to [a] constituent assembly does precisely that. Our Party is, therefore,

⁵² "His Majesty's Government of Nepal Concept of forward-looking reforms in the State System", The Government of Nepal, August 2003. The position paper also closely paralleled comments by the king: "The monarchy is exercising powers enshrined in the constitution prepared by the leaders of the change in 1990. We have never crossed the limit. The monarchy has not acted against the people's wishes, royal tradition or constitutional boundaries, and it will never do so". *Nepal Magazine*, 18 August-1 September 2003.

⁵³ ICG interview, Kathmandu, 17 September 2003.

⁵⁴ ICG interview, Kathmandu, 17 September 2003.

⁵⁵ ICG interview, Kathmandu, 22 September 2003.

⁵⁶ ICG interview, Kathmandu, September 2003.

opposed to the idea of attaching any precondition to the constituent assembly. Of course, different political parties and the king, for that matter, can go to the people with their own agenda during the election. Also, if the particular historical condition and the prevailing balance of forces so demand, there can be common understanding on certain issues during and after the election, but not certainly in the very beginning or right now and on fundamental questions of democracy.⁵⁷

There has also been some discussion that a constitutional commission could be formed as in 1990, drawing elements from the palace, the parties and the Maoists. Neither the parties nor the royalist government should accede to a constituent assembly until it has been far better defined, the parties have been brought to the negotiating table and there have been extensive discussions about security arrangements that would accompany any ballot and demobilisation agreement.

VI. CONCLUSION

There is every indication that the violence could continue at least for months. With both the Maoists and the royalist government seemingly bent on another period of muscle-flexing, innocent civilians will again pay the heaviest toll. As one journalist lamented, "Whole villages are getting up and leaving".⁵⁸ Both the army and the Maoists appear to feel confident, having made their preparations, that they stand to gain from continued intimidation. Both sides may consider that a quick return to negotiations would diminish their stature: the Maoists because they had just rejected a government proposal and the government because it had just made a proposal that was rejected.

Grim storm clouds line Nepal's horizon. There has been increasing talk of the king taking a more active and central role in the affairs of state for an extended period of time, and the palace has manoeuvred itself into a position where authoritarian solutions may be ever more likely. A journalist maintained, "The monarchy is surviving on the credibility of the RNA". In many respects, the longer the palace continues to be the focus of all questions not only of

war and peace but also of governance, the more jeopardy the monarchy may find itself in.⁵⁹

The international community, while showing some signs toward unity, remains divided on how much leeway to give the royalist government and whether force or diplomacy ultimately is the best tool for dealing with the Maoists. The more activist approach has again raised fears among local commentators and the Maoists about foreign intervention in Nepalese domestic affairs. These fears aside, a more coordinated approach would be welcome, and it is useful that all of the major international players in Nepal have gone strongly on the record in support of a rapid return to democracy. However, the international community must also take great care to fashion its intervention so as to support lasting peace and stability.

It remains an open question how long the Nepali Congress and UML will remain accommodating if there is no progress toward restoration of the democratic process from the palace. Pressure will also likely mount from smaller parties to intensify agitation to restore democracy, and widespread protest activity could further fuel the environment of chaos.

Now would seem to be the time for the international community to lean heavily on all the actors to behave responsibly. The Maoists should be warned that they are in ever growing danger of being seen as a force that is unwilling to embrace compromise and consequently of being increasingly condemned and opposed. The royalist government should be warned that the time for hollow rhetoric about democracy has passed and that an all-party government should be formed and the RNA held accountable for abuses in the field. Lastly, the parties should be warned that they can only expect to have a responsible role in the life and death matters of civil war, when in the national interest they put aside their own in-fighting and venality.

Kathmandu/Brussels 22 October 2002

⁵⁷ Correspondence with ICG, 26 September 2003.

⁵⁸ ICG interview, Kathmandu, 19 September 2003.

⁵⁹ ICG interview, Kathmandu, 20 September 2003.

APPENDIX A

MAP OF NEPAL



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