

INDIA-NEPAL - RELATIONS 1989-1990

TEXT OF THE STATEMENT OF EXTERNAL AFFAIRS MINISTER IN THE PARLIAMENT
ON NEPAL ON 26.4.89

The recent months have witnessed some strains in the age old relationship between India and Nepal. This has been a time of sorrow and regret for us. Indo-Nepal relationship has been truly unique. It cannot be easily summed up in cliches like "special relationship". No other two countries of the region had anything like it. The open border between India and Nepal, crossed daily by thousands of nationals of both countries without visas for a variety of purposes, is an evocative symbol of the Indo-Nepal relationship. Thus the Indo-Nepal border, though a political reality, is also part of a great social and cultural continuity.

Indo-Nepal relations are very old and date from ancient times, long long before 1950 or the treaty of peace and friendship. However, the 1950 treaty is a uniquely significant landmark in the relationship because it goes far beyond the standard diplomatic format of relationship and seeks to concretise a grand vision handed down from centuries. This was the vision cherished by the great leaders of both countries, Prime Minister Jawaharlal Nehru and His Majesty King Tribhuvan. It was a vision of a Nepal and an India, both independent, sovereign and free, but indissolubly linked by unbreakable bonds. It was a vision of two countries which, of their own free will, promised each other's nationals treatment on par with their own in all the vital aspects of life - in residence, in ownership of property, in participation in trade and commerce, in industrial and economic development, in the grant of concessions and contracts related to such development and other similar privileges. It was based on the impeccable logic that if sovereignty gives the power to impose restrictions, it also gives the power to do away with restrictions if the States, in their wisdom consider it fit to do so.

* [The text of this statement was provided by the High Commission of India, Canberra.]

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Over the years and decades that followed, India has sought to live up to both the letter and the spirit of the 1950 treaty. Thus it is that while there are very strict regulations against the employment of foreign nationals in India, millions of Nepalese live and work freely in all parts of India. Not many know that Nepalese are eligible to join not only the army, but also all government services in India except the very limited posts of IFS, IAS and the IPS. Nepalese nationals have extensive property holdings in this country. They do business here without let or hindrance. There is no restriction on their remitting any amount of money back to Nepal as their savings or profit.

Besides this India, despite its financial constraints and its own struggle to raise the living standards of its people while emerging from the long era of colonial stagnation, has done its best to be of assistance to Nepal in the process of its economic development. India has fully financed and implemented mutual cooperation schemes for the development of Nepal's water resources like the Kosi and the Gandak projects. Our grant assistance for a number of other economic projects totals around Rs.200-250 million a year. About 275 seats, including a large number of engineering and medical seats, are offered to Nepalese students every year under various scholarships. Under various trade and transit treaties since 1950, India has given Nepal highly preferential treatment, specially for Nepalese primary products and manufactured goods, on a non-reciprocal basis, plus very extensive transit facilities for Nepal's trade with third countries. The excise duty on Indian goods imported by Nepal is refunded to Nepal in full. A quota of essential commodities such as coal, iron and steel, sugar, foodgrains, baby food, milk products, normally banned for export, were made available to Nepal at preferential prices. India has also invariably responded positively to Nepal's request for emergency supplies of foodgrains, sugar, cement, etc. A revolving credit of Rs. 250 million was extended to Nepal to meet temporary shortfalls in its Indian currency reserves. At the Calcutta port, facilities superior even to those extended to Indian importers were extended to Nepalese importers, at a cost of about Rs. 1.5 crores every year incurred by the Government of India. Under the Product Exchange Agreement with Nepal, India took over Nepalese imports of certain refined petroleum products and crude at the port and supplied equivalent amounts of a whole range of other petroleum products at numerous points along the Indo-Nepal border. Nepal was charged only the actual expenses by the Indian Oil Corporation and that too in Rupees.

Sir, I am submitting these details merely to show that within our own limitations, we have done our best in investing our relationship with Nepal with a content and spirit in consonance with our age-old many-spangles bonds and with a vision embodied in the 1950 Treaty. All that India sought in return from Nepal was genuine appreciation of our concerns and an open and candid friendship on par with our own. This was why, though it was perhaps inevitable, that the economic relationship between the two countries should tend to be dominated by India. In 1960 a bold attempt was made in a new Treaty of Trade and Transit, to establish what amounted to a common market between the two countries. That this grand vision was not realised was not because it ^{was} unrealistic or over-ambitious, but because of domestic political changes in Nepal.

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Unfortunately the vision of 1950 has been eroded over the years. Its spirit has been weakened, its content whittled away practically in every sphere of the Indo-Nepal relationship. Sadder still has been the systematic discrimination against the relatively small community of Indians in Nepal, who number only about 150,000, in the important areas of their day-to-day existence. In contrast, the number of Nepalese in India are 3 to 5 millions, or even more who continue to enjoy all the rights detailed above. Stringent restrictions have been placed on ownership of property by Indians in Nepal. In April 1987 something much more serious happened. HMGN included Indians in the category of foreigners, requiring work permits for employment in any organised sector. Beginning with three districts around Kathmandu, this measure was later expanded to the whole of the country in September 1988. While it has not yet been fully implemented on the ground, many Indian professionals including a number of teachers who have for long served the cause of education of Nepalese youth have been given notice of termination of service. There are other reports that Nepalese concerns, some very close to the Indo-Nepal border, are hiring workers only on the basis of Nepali citizenship certificates. There are official reports that the Government is planning to review all the citizenship certificates granted, largely to people of Indian origin, over the last 12 years. It is said that the number involved in this move is 6.48 million. What is even sadder are the cases in which Indian professionals, employed by third country firms executing contracts in Nepal, have been refused employment solely because they are Indians. All this adds up to a picture far from happy. It would be difficult to imagine anything further from the vision of Jawaharlal Nehru and HM King Tribhuvan. Our representations against these moves have not received any satisfactory or even a considered response from Nepal, attempts have been made to dismiss these vital issues by stating, for instance, that the work permit system was introduced for security reasons, again that it was meant to collect statistics and then again that it was meant for fulfilling the basic needs programme. The situation speaks for itself, nothing more needs to be said.

Not only are Indians as individuals discriminated against, but Indian firms, having won contracts against international bidding, have been deprived of what is due to them through manoeuvres in favour of third countries. Here too, our representations have received nothing more than assurances that are not fulfilled in practice.

In the field of trade and transit, India has always been more than accommodating, acknowledging that the Nepalese economy has special needs. As mentioned earlier, the 1960 Treaty of Trade and Transit was based on the subsequently unfulfilled vision of an Indo-Nepalese common market. Even without this, the Indo-Nepal Treaties of Trade and Transit which expired on March 23, 1989, provided an extensive preferential regime for Nepalese exports and Nepal's transit trade with third countries. Nepalese primary products and manufactures with a certain degree of indigenous content were given duty free and quota free access to the Indian market. Trade was conducted on a rupee payment basis. Nepal was given as many as 15 routes through Indian territory for its transit trade. In addition, there were separate transit routes for Nepal's trade with Bangladesh and Bhutan. Nepal was also allowed to move goods from one part of that country to another through Indian territory. As mentioned earlier, Nepalese importers were given special facilities at Calcutta port superior to those available to their counterparts.

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Sir, all these extensive facilities were given solely in the spirit of the 1950 Treaty. Otherwise, the strictly legal position is that Nepal is not a member of GATT. India has not ratified either the International Convention on Transit Trade of Landlocked Countries or the UN Convention on the Law of the Sea. Therefore, in matters of transit, India has, strictly speaking, no legal obligations towards Nepal. But India has never sought to take refuge behind this legalistic position.

However, even in the area of trade, there has been no reciprocation of our sentiments. The only concession that India was allowed was a tariff regime for its exports to Nepal superior to those of third countries. This was in return for providing Nepal with a unique preferential access to an extensive market right next door. However in June 1987, Nepal, through a budgetary exercise of tariff rationalisation, completely removed all these tariff advantages earlier available for Indian exports. Besides basic customs duty, additional customs duty was also imposed on certain categories of Indian goods. As a result, Indian exports to Nepal in 1987-88 dropped to half of the previous year's figure. Nepalese promises that the additional customs duty imposed would be removed did not materialise.

When the Indo-Nepal trade treaty ended in March 1988, the new package, worked out in October 1988, included two Nepalese commitments. Those were that, firstly, the additional customs duty on Indian goods would be removed and secondly, this facility would not be extended to any third country. However, Nepal did not live up to either undertaking. After a fruitless wait of five months till February 1989, despite repeated reminders to the Government of Nepal, we were left with no alternative but to ask for a new unified Treaty of Trade and Transit. It should be noted here that since no new Treaty has been signed, there was no question of our "abrogating" it, as has been claimed by official Nepalese spokesman.

The Government of India have always wanted, and had until 1978, a single Treaty of Trade and Transit with Nepal. This is because for countries like India and Nepal, with a very long open border of 1700 kms, trade and transit are indissolubly linked matters. The extensive transit facilities provided to Nepal were being misused for large scale smuggling, which has had a highly negative impact on economy. In 1978 India, despite serious reservations, agreed to separate treaties of trade and transit solely as a special gesture to Nepal. The results have not been happy. HMGN have not fulfilled their commitments to us in trade matters and the agreement for cooperation in controlling unauthorised trade has practically become a dead letter. Under these circumstances, and also given the fact that the transit treaty as also the extended Trade Treaty, both lapsed simultaneously on March 23, 1989, we have now sought a single unified treaty as was in force prior to 1978.

The present situation is thus entirely a result of actions, both of omission and commission, on the Nepalese side. For its part, India made efforts right up to the end, to ensure that Nepal fulfilled the commitments made by it in October 1988. These commitments were not fulfilled, while Nepal went on regardless to ask for the signature of the Treaty package.

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As a result of the lapse of the Trade Treaty, the highly preferential regime for Nepalese goods has been replaced by the normal export-import regime applicable to India's trade with many other third countries. The government have further taken steps to see that the problems created by this for the common people of Nepal are minimised. Though the quota system for supply of essential commodities has lapsed with the trade treaty, it has been conveyed to HMG that the full quota amounts for 1989 sought by them for commodities such as sugar, baby food, milk products, coconut oil, gur, etc. will be supplied in full. However, since these items are all in the category of private transactions, these essential commodities can move into Nepal only if and when the Nepalese importers lift the commodities.

Steps have also been taken to see that important items such as medicines and non-iodized salt, cement, etc. which are under Open General Licence are cleared without any hitch. In the case of iodized salt we have similarly, on our own, taken steps to clear pending consignments against bonds and speeded up the grant of permits now required for its export to Nepal. Our officials at the checkpoints of Raxaul and Jogbani have been instructed to clear all goods eligible for export to Nepal and vice-versa with the utmost despatch and the work is being closely monitored. Even the Nepalese newspapers have now begun to concede that items like medicines, salt, vegetables and a host of other commodities are now entering Nepal every day.

In the field of transit, a landlocked country has a right only to one transit route to the sea under international law. Even without the Transit Treaty, Nepal now has the following facilities:

1. Two transit points, Raxaul and Jogbani which are the closest to Calcutta port and which earlier carried 80-90% of the transit cargo;
2. Facilities at Calcutta port as detailed in the foregoing paragraphs;
3. Transit routes as earlier for trade with Bangladesh and Bhutan;
4. Nepal - Nepal transit routes through India.

The Nepalese Foreign Minister during his visit to New Delhi on March 26-27, 1989, handed over to us their new draft for a trade treaty. This draft is interesting in as much as it indicates that the Nepalese Government themselves wish to move away from the earlier regime and now towards MFN status. It is thus evident that the Government of Nepal has desired not to go back to the earlier trade regime with India. This has been made even more clear by the extensive tariff changes implemented by them on April 11, 1989, which have removed any remaining tariff concessions for Indian exports. We do not understand, therefore, why India is being accused of causing hardship to Nepal in the field of trade.

In the transit field, Nepal has sought a revival of the earlier treaty, for reasons that should be obvious. While India seeks a unified Trade and Transit Treaty, the transit facilities available to Nepal, as explained above, are already in excess of what would be contained in normal Transit treaties under international law.

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In his New Year's message to the nation on April 13, 1989, His Majesty King Birendra has expressed his Government's readiness to settle the problems "imposed on us by our geography as a landlocked nation" through "a friendly dialogue and negotiation". Meanwhile, the Foreign Minister of Nepal has, in separate interviews to the New York Times and to the BBC, reportedly said that Nepal no longer wants a special relationship with India, that over-dependence on any one country is bad, that what Nepal wants now is inter-dependence. He has also reportedly affirmed that the recent tariff changes introduced on April 11, are irrevocable, reiterating that the unique, or special or traditional relationship is "now over". Subsequently, there have also been statements attributed to the chief official spokesman of the Government of Nepal affirming that if there was to be one treaty, Nepal would want it to be a Transit Treaty alone. He also reportedly added that since India apparently felt that Nepal had violated the 1950 Treaty, which Nepal did not accept, Nepal was ready for direct and detailed talks on the whole gamut of Indo-Nepal relations, he also reportedly re-asserted the determination of the Government of Nepal to go ahead with their citizenship and work permit drives for foreign residents in Nepal.

All these years, our only wish has been to continue our relationship with Nepal for the mutual benefit of both countries and peoples. At the same time, we have all along assured them of our respect for their sovereignty, their identity as a nation and our desire for their prosperity now and in the future. The 1950 treaty determined our mutual relationship on the basis of looking after each other's interest, and conveying to the world the strength of the unity of purpose between our two countries. I would like to assure the house that our overwhelming desire to have a mutually beneficial relationship with Nepal remains undiminished.

India has never, despite assertions to the contrary from Nepal, sought a review of the 1950 Treaty. Indeed our desire has always been, and continues to be, to ensure that both the letter and the spirit of the treaty are fulfilled. Although no single thrust seems to be discernible in the various recent statements from the Nepalese side, as I have just detailed, they have, on occasions, reiterated that they are happy with the 1950 treaty. From this it would be clear that both countries could, with profit, go into the working of the Treaty.

With a view to ensuring its implementation in letter and spirit, India is ready and willing for this, as well as to discuss the whole gamut of relations.

We would like to see the Indo-Nepal relationship continue to be, as before, a model. As always, we wish the government and people of Nepal well. What we desire is to continue our deeply cherished relationship on the basis of sovereignty, mutual trust, mutual benefit and reciprocity in understanding and safeguarding each other's interests and concerns. The people of Nepal will not find us wanting. We harbour nothing but the highest regard for their concerns and the best wishes for their future.

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INDO-NEPAL JOINT COMMUNIQUE

Shri K.P. Bhattarai, the Prime Minister of Nepal, visited India from 8-10 June 1990 at the invitation of the Prime Minister of India, Shri V.P. Singh. The two leaders held talks on bilateral, regional and international issues of mutual concern. The talks were held in the most cordial and friendly atmosphere, characterising the age-old ties and shared values of the two countries in the economic, social, cultural and religious spheres.

2. The Prime Minister of India applauded the success of the movement for democracy in Nepal and the commencement of the process of the establishment of a multi-party system with a constitutional monarchy and with the people of Nepal as the repository of power. The two leaders reaffirmed their desire promptly to normalise the unique, friendly and brotherly relations between their two peoples, impart to them new dimensions and dynamism and elevate them to ever-rising levels of cordiality.

3. The two leaders reiterated their Government's adherence to and respect for the principles of sovereign equality, territorial integrity, national independence, non-use of force, non-interference in each other's internal affairs and peaceful settlement of all disputes. They agreed that Nepal and India will fully respect each other's security concerns. In this context, neither side will allow activities in its territory prejudicial to the security of the other. The two countries shall have prior consultations with a view to reaching mutual agreement on such defence related matters which, in the view of either country, could pose a threat to its security.

4. Pending the finalisation of a comprehensive arrangement covering all aspects of bilateral relations, the two Prime Ministers agreed to restore status quo ante to April 1, 1987 in the relations between the two countries. The two governments will take all necessary steps, such as the issue of administrative orders, notifications, legislations/ordinances etc. in order to ensure that status quo ante to April 1, 1987 is restored by July 1, 1990. Illustrative lists of actions to be completed by the two governments are given in Annexure I (India) and Annexure II (Nepal). It was further agreed that the above arrangements would not be altered by their side without mutual consultations.

5. The two leaders declared their solemn intention to usher in a new era of cooperation between the two countries, particularly in the spheres of industrial and human resources development, for the harvesting of the waters of the common rivers for the benefit of the two peoples and for the protection and management of the environment.

6. During the visit, the Prime Minister of Nepal called on the President of India, Shri R. Venkataraman and on the Vice-President of India, Dr. S.D. Sharma. He also visited Rajghat and Shantivana and laid wreaths in honour of Mahatma Gandhi and Pandit Jawaharlal Nehru.

7. The Prime Minister of Nepal extended a cordial invitation to the Prime Minister of India to visit Nepal. The invitation was accepted with pleasure.

ANNEXURE ISTEPS TO BE TAKEN BY THE GOVERNMENT OF INDIATRADE

1. Import of primary products from Nepal to be exempted from basic customs duties as well as from quantitative restrictions.
2. Provide access, free of basic customs duties and quantitative restrictions, for all manufactured articles containing not less than sixty-five percent of Nepalese materials or Nepalese and Indian materials, on a case by case basis, keeping in mind the need for expeditious clearance.
3. Allow fifty percent tariff concession on MFN rate of import duty, where value of Nepalese and Indian materials and labour added in Nepal is at least forty per cent of the ex-factory price, on a case by case basis, keeping in mind the need for expeditious clearance.
4. Export to Nepal of quota goods, namely those that are either restricted or canalised for export from India.
5. The refund of Indian excise duty to Nepal under the duty refund procedure should be such as to cover, but not to exceed, the basic and additional customs duties levied on similar goods imported from third countries.
6. Supplies of coke and coal to Nepal under quota will be resumed. Prices and supply schedules will be subject to agreement between MMTC and Nepal Coal Limited.
7. Canalising of exports of P.O.L. products to Nepal through I.O.C., and agreement between I.O.C. and N.O.C. for product exchange between the two organisations.
8. Restoration of the standby credit facility to Nepal at the enhanced level of Indian rupees 350 million.

TRANSIT

9. Notification under Section 7 of the Customs Act, 1962, restoring the 22 border points covered under Government of India Notification No.73/Customs/F.No 552/58/78-LCI and 238/Customs dated 15.12.1979 and 149/84 Customs dated 19.5.1984, and the routes specified therein as land customs stations for the movement of goods between India and Nepal.
10. The 15 points earlier designated as transit points for Nepal's transit trade, through India, with third countries, be reinstated.

OTHERS

11. Restoration of the movement of Nepalese trucks to and from the nearest railway heads/terminals.
12. Once a joint venture is approved by the two governments, the Government of India would allow movement of capital as per the terms agreed upon in joint venture.
13. Restoration of the three earlier immigration points on the Indo-Nepal border for the movement of tourists.

ANNEXURE IISTEPS TO BE TAKEN BY HIS MAJESTY'S GOVERNMENT OF NEPALTRADE

1. Restoration of tariff preferences to Indian goods by, inter alia, exemption of additional customs duty.
2. Exemption of basic customs duty on imports of primary products from India as provided for similar products from Nepal imported to India.
3. Tariff preferences for third country goods should not be such as to be detrimental to the tariff regime for Indian exports.
4. Valuation of Indian goods exported under D.R.P. for assessment of basic customs duty will be made on the basis of ex-factory/ex-depot price, excluding any element of refundable Indian duties and taxes, but including transport and insurance charges, wherever applied.

INDIAN NATIONALS

5. Removal of Indian nationals from the ambit of the Work Permit Scheme.
6. Indian nationals employed in schools in Nepal will be placed on the same footing as Nepalese nationals as regards terms and conditions of employment.

OTHER MATTERS

7. Removal of restrictions on the movement of Indian currency between Nepal and India on the basis of reciprocity.
8. Restoration of facilities for Indian nationals to have their vehicles registered in Nepal on the basis of reciprocity.
