

Unilateral Coercive Blockade Imposed by India on Nepal

Background

Nepal promulgated its new constitution on Sept. 20, 2015 by an overwhelming majority of the Constituent Assembly (CA).¹ A constitution gets perfection out of practice, judicial review and definition. It applies to Nepal's constitution as well. In addition, the constitution itself offers room for amendments. Such amendments will take into account aspirations of the people and the changing needs of time.

Nepal is party to more than 22 international human rights instruments and the treaty act. The latter nullifies any domestic provision that is in contradiction with the international law. Nepal's constitution does not have any provision that contradicts with international law.

The process of constitution making has also been exemplary. Each of its 308 articles was thoroughly voted in the Constituent Assembly (CA). Prior to the voting, each provision and article was comprehensively discussed and debated in related CA committees and in the Constitutional and Dispute Resolution Committee. Needless to say, the constitution has numerous progressive principles, including the principle of republicanism, federalism, secularism and inclusive representation.

With the promulgation of the constitution, the long-drawn, contentious and expensive process of drafting the constitution has come to an end. But a protest movement in the southern plains of Nepal bordering India is going on demanding for identity-based federal structures. Some Madhesh-based parties including the Federal Socialist Forum Nepal, Nepal Sadbhavana Party, Terai Madhesh Democratic Party and Terai Madhesh Sadbhavana Party are in the protest.

In less than a month of constitution promulgation, a coalition government led by CPN UML has been formed. The government has formed a team comprising leaders of the ruling parties to hold dialogue with the agitating parties and sort out the problems; and the dialogue between the government team and the agitating parties is going on. It has been reported that the government is preparing to amend the newly adopted constitution in order to incorporate the genuine and logical demands of the agitating parties.²

Just two days before the promulgation of the Constitution, Foreign Secretary of India Mr. S. Jaishankar visited Nepal, and suggested senior Nepalese leaders to delay the promulgation of the constitution in order to address the concerns of the agitating parties. But, it was very difficult for the Nepalese leaders to hold the promulgation of the constitution because around 90 per cent of the Constituent Assembly members had already endorsed the new constitution and set the promulgation date. The constitution was promulgated by the President as scheduled amidst a special function.

Right after the promulgation of the constitution, it was also reported in the media that, India proposed 7-point amendments to the Nepal's leadership via India ambassador Ranjit Rae³

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1. 537 out of 598 existing CA members endorsed and signed on the constitution. A total of 61 members, including 58 of Madhesi parties boycotted the voting process on the draft constitution.
 2. Govt gears up statute revision; <http://kathmandupost.ekantipur.com/news/2015-10-30/govt-gears-up-for-statute-revision.html> (visited on 30 Oct. 15)
 3. India wants Nepal to make 7 changes in statute, reports The Indian Express; <http://setopati.net/politics/9433/India-wants-Nepal-to-make-7-changes-in-statute,-reports-The-Indian-Express/> (visited on 29 October 2015)

Following the promulgation of the new constitution in Nepal, India started blocking the passage of fuel tankers to Nepal. The promulgation of the Nepalese constitution on the scheduled date might have been taken by India as a rejection of its suggestions by Nepal. Though the Government of India insists that there is neither a formal nor an informal blockade in place, the passage of cargo trucks, including fuel tankers from India into Nepal has been obstructed for several weeks.

Indian blockade on Nepal

On 23 September 2015, India started tightening the passage of Nepal bound goods carriers through all the entry points citing increasing violence in the bordering areas of Nepal. The Indian security force Sashastra Seema Bal (SSB) personnel deployed at the border stopped goods carriers at the Indian side. Out of the six entry points, Sunauli-Bhairahawa route is the major one through which on a regular day 300-400 goods carrier used to enter Nepal. But, on the 24th of September, only four vehicles entered Nepal from Sunauli.⁴

On 25 September, the Indian authorities continued to stop the Nepal bound goods carrier vehicles, LPG bullets and oil tankers at Nepal-India border. Issuing a press statement, the Indian Embassy in Kathmandu said that the reported obstructions to the Nepal-bound cargo and freights were due to unrest, protests and demonstrations on the Nepali side.⁵

Prime Minister Sushil Koirala and CPN-UML leaders met Indian Ambassador Ranjit Rae and drew his attention to the crisis on the border where Nepal-bound cargo and freight were stranded on the Indian side in the lack of clearance. But, the ambassador refused to acknowledge that the problems were created by India.⁶

On 26 September, issuing a press statement, the Ministry of Foreign Affairs expressed concern over the ‘undue delay’ in the movement and clearance of Nepal-bound cargo vehicles at the Indian side of the border. It was Nepal's first official reaction since the disruption of supplies began 3 days ago. “This decreased flow has been noted particularly since September 23, 2015 whereas the security situation in Terai has remained the same for more than a month and now has been improving gradually,” the statement read.⁷

On September 30, the government decided not to distribute petroleum products to private vehicles in view of deepening fuel crisis following ‘unofficial blockade’ imposed by India.⁸

On October 2, leader of India’s Bahujan Samaj Party (BSP) Sudhindra Bhadoria said India should have confined its role to suggestions and concerns’ rather than reacting to the way it has. He said that the current ties between Nepal and India have hit a low point in the wake of Indian government’s move to impose unofficial blockade against Nepal. He further said that

4 See more at: <http://kathmandupost.ekantipur.com/news/2015-09-24/india-tightens-security-at-bhairahawa-point-only-4-vehicles-allowed-to-enter-nepal.html>

5 See more at: <http://kathmandupost.ekantipur.com/news/2015-09-25/obstruction-to-nepal-bound-cargo-from-nepali-side-indian-embassy.html>

6 See more at: <http://kathmandupost.ekantipur.com/news/2015-09-26/pm-leaders-draw-indias-attention-ambassador-rae-denies-delhis-fault.html>

7 See more at: <http://kathmandupost.ekantipur.com/news/2015-09-26/nepal-expresses-concern-by-undue-delay-at-border-points.html>

8 See more at: <http://kathmandupost.ekantipur.com/news/2015-09-30/govt-not-to-distribute-fuel-to-pvt-vehicles-from-thursday.html>

it was not appropriate from a humanitarian perspective to block the supply of fuel and medicine, among other essential commodities, to a landlocked country.⁹

On October 3, the industrialists in Morang paid as high as Rs 350 million additional fees to the Indian side due to delay in cargo clearance from the Indian customs officials during the on-going unofficial blockade from India. Nepalese industrialists had already paid Rs 359 million to the Indians in a week for India officials' failure for cargo clearance. Nearly 700 goods-laden vehicles of third countries arriving via Kolkata port were stranded in Jogbani of India after India imposed an unofficial blockade on Nepal.¹⁰

On October 9, the United States advised its citizens to reconsider any travel plans to Nepal due to the on-going fuel crisis acknowledging that the crisis was a result of "blockages at the border with India".¹¹

On 17 October, newly appointed Deputy Prime Minister and Foreign Minister Kamal Thapa left for India to discuss the 'unofficial blockade' imposed by India to Nepal. During his visit to India, he met his Indian counterpart Sushma Swaraj on 18 October and briefed about the recent change in government, constitution amendment process and step taken towards political stability. He also talked about the ongoing tension at Nepal-India border and obstruction in the movement of vehicles carrying daily essentials.¹²

On 19 October, Deputy Prime Minister and Foreign Minister Kamal Thapa met Indian Prime Minister Narendra Modi in New Delhi. During the meeting at the Indian PM's official residence, DPM Thapa took up the issue of easing the Indian unofficial blockade against Nepal with the Indian PM. Modi assured Thapa to increase the reduced flow of goods through the border points.¹³

On 24 October, Deputy Prime Minister and Minister for Foreign Affairs Kamal Thapa said at the Legislature-Parliament meeting that during his visit to India, he had met with the India's Prime Minister, Minister for Foreign Affairs, Home Minister and top political leadership. During his meetings with the Indian leaders, DPM Thapa was assured of supplying sufficient fuel to the country by the Indian side. However, "The commitments from the Indian side were not implemented honestly."¹⁴

The latest example of such dishonesty on the side of the Indian government was seen yesterday, on November 2. As soon as the Nepal Police cleared the obstruction at the checkpoint at Birgunj-Raxaul border and allowed Indian trucks stranded in Nepal to enter India, the Indian Border Security Force did not allow Nepali trucks stranded in India to enter Nepal, which was expected to happen as a reciprocal move. Instead, according to the

9 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-02/india-shouldve-limited-its-role.html>

10 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-03/industrialists-pay-upto-rs-350m-to-indian-side-as-blockade-continues.html>

11 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-09/us-acknowledges-indian-blockade-warns-citizens-against-nepal-trip.html>

12 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-18/indian-minister-swaraj-tells-thapa-to-resolve-internal-problems.html>

13 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-19/thapa-discusses-indian-blockade-with-indian-pm-modi.html>

14 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-24/govt-making-efforts-to-ease-border-problems-dpm-thapa.html>

Ministry of Foreign Affairs of Nepal¹⁵, the Indian Border Security Force allowed mobs to enter Nepal from the no-man's land. The mobs soon started pelting stones at Nepali security personnel and hurling petrol bomb at a local police station. To contain the violence that injured 17 police personnel, police opened fire that killed an Indian man who was among the agitators. Earlier, police had arrested five demonstrators while clearing the obstruction. Of them, two were Indian nationals.

Following the incident in Raxaul, India has blocked all the checkpoints along the Indo-Nepal border.

Impact of the blockade

As Nepal is solely dependent on fuel supplies from India, almost a month long blockhead adversely affected social, economic and humanitarian situation in Nepal. Severe fuel shortages created by the blockade have started to cause widespread disruption to every-day life and brought the economy virtually to a standstill. A brief account of the impact is as follows:

Education: The continuous blockade by India has directly hit the entire academic sector, compelling shutdown of schools. The fuel crisis has affected millions of students, including around one million school students in the Valley alone. As informed by Lachhe Bahadur KC, President of Private and Boarding Schools' Organization Nepal, of the 2000 private schools operating in the Kathmandu Valley, about 80 per cent have been closed as they faced difficulty to ferry students and teachers to and from schools. UNICEF estimates that more than 1.6 million children in the nine districts in the central and eastern plains alone have been deprived of schooling following the unrest in the Terai as schools in Terai have been forced to remain shut for the last 75 days.¹⁶

Health: Health sector is another major sector hit by the blockade. Hospitals are gradually being unable to provide health care services due to the shortage of oxygen, medicines and blood supply. The hospital authorities have made it clear that they are not in a position to run hospitals without those vital supplies. They also highlighted that the dispensaries will not be able to supply life-saving medicines in future if the on-going economic blockade persists any longer.¹⁷ Major public hospitals in the Kathmandu Valley including Bir Hospital, Teaching Hospital, Kanti Children Hospital, Patan Hospital, Civil Service Hospital, Gangalal National Heart Centre and Paropakar Maternity and Women Hospital need 1700 litres of diesel, 200 litres of petrol, 18 cylinders of LPG and 245 cylinders of oxygen every day to run their services unhindered.¹⁸

Sixty per cent of the total medicine consumed in Nepal is imported from other countries. Due to the acute shortage of fuel caused by the blockade, airlines are ferrying fuels instead of medicines. As a result, essential injections meant for children and life-saving medicines of cancer, cardio, etc. have been stranded in different airports.¹⁹ Similarly, around 400 trucks laden with medicine have been stranded at various border points in India; and pharmaceutical

15 <http://www.mofa.gov.np/press-release/the-response-of-the-spokesperson-of-the-ministry-of-foreign-affairs-on-the-queries-regarding-the-situation-in-birgunj-today>

16 See more at: <http://unicef.org.np/uploads/files/290819268861771665-15-10-29-unicef-statement-on-current-situation.pdf>

17 See more at: <http://www.myrepublica.com/feature-article/story/30217/public-hospitals-not-in-a-position-to-function-without-vital-supplies.html#sthash.lxebFz6A.dpuf>

18 See more at: <http://kantipur=ekantipur=com/news/2015-10-27/20151027072728=html> ; and <http://thehimalayantimes.com/kathmandu/fuel-medicine-shortage-paralyses-valley-hospitals/>

19 See more at: <http://annapurnapost.com/News.aspx/story/21029>

industries within the country have stopped medicine production due to the lack of raw materials. Consequently, medicines across the country have run out of stock.²⁰

Drinking water: Total demand of drinking water in the Kathmandu Valley is 350,000,000 litres per day. The necessity is calculated on the basis of population of capital, 3.5 million but additional demand of potable water by other sectors like Hospitals, Schools, Hotels and business sector has not been included in this approximation. Water supply by the Kathmandu Upatyaka Khanepani Limited (Kathmandu Valley Drinking Water Limited, KUKL), responsible for the operation and management of water and wastewater services in the Valley, amounts only to 150,000,000 litres, as informed by the information officer of the KUKL. Rest of the drinking water demand of the Valley is fulfilled by the private tankers, which have been hit hardest by the fuel shortage. As a result, the Valley dwellers are facing huge scarcity of drinking water.

Transportation: The blockade has disrupted transportation at the height of Nepal's national holiday season, preventing millions from travelling to ancestral homes. There have been many deaths from traffic accidents caused by dangerously overcrowded public transport, with passengers including women, children and the elderly forced to travel precariously on rooftops of buses.²¹ On the other hand, according to the National Federation of Transport Entrepreneurs, the transport sector is facing a loss of 200 to 250 million rupees a day.

Energy: Nepal needs 1200 megawatt electricity to meet its energy requirements. But, current production of hydroelectricity in Nepal is only 600 megawatts and 180 megawatt is imported from India.²² Rest of the energy need is met using generators. The shortage of fuel supply has badly affected the operation of generators causing huge energy crisis.

Similarly, the LPG crisis has caused huge difficulty for the Kathmandu Valley consumers to prepare their meal. Most of the hotels and restaurants have been forced to shut. Country's monthly LPG demand stands at 32,000 tonnes, which soars 30-40 per cent during winter. However, the Indian Oil Corporation has sharply cut the supply of LPG to Nepal since the unofficial trade and transit embargo. According to the Nepal Oil Corporation, more than 225 gas bullets have been stuck on the Indian side of the border. A bullet carries 18 tonnes of LPG.²³

Food: Acute shortage of fuel continues to impede planned deliveries of relief supplies to the earthquake-affected villages. According to the United Nations Humanitarian Coordinator's Office in Kathmandu, hundreds of tonnes of food materials meant for the earthquake victims are stuck in warehouses.²⁴ Not only the earthquake-affected villages, many other food insecure villages of the country are facing food scarcity due to the limited supply. There is possibility of a mass hunger in the near future. In the areas, where foods are still available, prices of food items have gone exceptionally up reaching beyond affordable capacity of general people.

20 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-08/dearth-of-medicine-hits-health-services.html>

21 See more at: <http://www.awcnepal.org/index.php/component/content/article/80-news-and-events/125-independent-citizens-call-on-international-community-to-address-humanitarian-crisis-in-nepal>

22 See more at: <http://www.nepalenergyforum.com>

23 See more at: <http://kathmandupost.ekantipur.com/news/2015-11-01/cooking-gas-crisis-leaves-public-high-and-dry.html>

24 See more at: <http://kathmandupost.ekantipur.com/news/2015-10-17/fuel-dearth-hits-delivery-to-quake-hit-areas-un.html>

Agriculture: Over 70 percent of Nepal's population works in the agriculture sector, accounting for 38 percent of the GDP. Due to the blockade, farmers are not getting improved seeds and fertilizers that are largely imported from India and other countries. Imported fertilizers are currently dumped in Indian border owing to transit blockade by India. In addition, in most of the Terai region considered to be the Nepal's food basket, water supply for the irrigation is done by pumping water. Farmers of the region are complaining that they have not been able to cultivate their lands owing to the lack of fuel to operate water pumps and irrigate their fields. It is going to significantly reduce the food production in the region and ultimately create food scarcity in the country.

Economy and development: All over Nepal, industries as well as small businesses are closed and development activities, including construction of vital infrastructure, are at standstill. Tourism has been severely disrupted during what would have been a peak season. Employment prospects have diminished nationally, forcing hundreds of thousands more to consider migrating to India, the Gulf and Malaysia.²⁵

The government's collection of revenue and its expenditure have both declined as of October 23 of the current fiscal year due to the long-running banda (general strike) in Terai and unofficial embargo imposed by India. According to the Nepal Rastra Bank (NRB), the government collected only Rs 77 billion in revenues as compared to Rs 90 billion in the same period last fiscal year.²⁶

Likewise, the private sector business is losing around Rs. 2 billion daily due to the banda and blockade. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) and Nepal Chambers of Commerce (NCC) have warned that the industrial sector would face a disaster if the government did not announce relief package for the business sector.²⁷

Violation of international legal provisions

India's unofficial trade blockade on Nepal has breached the international conventions and multilateral agreements that both Nepal and India have signed. Although the southern neighbour has not officially declared a trade and transit embargo on Nepal, it has been creating unnecessary hassles such as delaying clearance of Nepal-bound cargo trucks carrying goods from third countries, and halting the supplies of essentials and petroleum products.

India's action violates the United Nations Convention on the Law of the Sea 1982, Provisions of World Trade Organization, Nepal-India Transit Treaty and Agreement on South Asia Free Trade Area Agreement (SAFTA).

As per the Article 125 of the Law of the Sea 1982, a land-locked country gets an unrestricted right of access to and from the sea of the nearby coastal state. And, a transit country should provide good infrastructure to enable the landlocked country to get access to the sea. "To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport," the convention states. Article 130 of the same has made a provision on measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit. Clause 1 of the article says the transit states shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit. And, clause 2 states

25 See more at: <http://www.thehindu.com/news/international/south-asia/independent-citizens-call-on-international-community-to-address-humanitarian-crisis-in-nepal/article7823863.ece>

26 <http://kathmandupost.ekantipur.com/news/2015-11-01/banda-blockade-eat-into-govt-revenue-expenditure.html>

27 See more at: <http://www.nepalupclose.com/News.aspx?Category=ECONOMY-BUSINESS>

“Should such delays or difficulties occur, the competent authorities of the transit States and land-locked States concerned shall cooperate towards their expeditious elimination”.

Nepal and India have signed a transit treaty, which has also ensured unrestricted rights of access to the sea as long one contracting party does not infringe legitimate interest of another country. “Except in case of failure to comply with the procedure prescribed, such traffic in transit shall not be subject to avoidable delays or restrictions,” the bilateral Transit Treaty States.

Similarly, South Asian Free Trade Area (SAFTA) has also made a provision of providing transit facilities for efficient intra SAARC trade, especially for the land-locked contracting states. Likewise, the WTO rules provide that the country of transit should provide route to the land-locked country.

Despite these provisions of international and bilateral as well as multilateral conventions and treaties, India has been blocking Nepal-bound cargos on the pretext that Indian transporters delivering the goods could be at risk if they were allowed to go to Nepal, although the Nepal government has assured security.

Conclusion

When the people of Nepal have been struggling to overcome the impact of the devastating earthquake of 25 April 2015, the extended blockade by India has crippled the economy of Nepal and led to great human suffering. Whatever reason it presents, India is mainly imposing undeclared blockade against Nepal as a 'unilateral coercive measure' to compel the latter amend its newly promulgated constitution as per India's recommendations.

Nepal promulgated its new constitution by an overwhelming majority of the Constituent Assembly following intensive discussion on every Article. It has adopted fundamental principles of human rights and democracy, and the agitating parties have not been able to pinpoint which provision of the constitution is faulty. Their argument is only about discrimination based on traditional practice, which is not the subject of the constitution. It should be dealt with other policies and programs.

The government has already made commitments to amend the constitution and has introduced an amendment proposal in order to address the key demands of the agitating parties. And, the dialogue between the government and the agitating parties is heading towards positive direction. As a sovereign nation-state and a society that believes in due process, Nepal is fully capable of dealing with its internal challenges, including addressing anxieties of its Madhesi, Tharu and other communities through consultation, negotiation and constitutional amendment. It is capable of managing their interrelationships for greater good without the involvement of external actors.

Despite the Nepal Government's frequent request to ease the blocked, India has continued the blockade violating the uninterrupted trade rights of the landlocked country provided by international and bilateral laws including the UN Convention on the Law of the Sea, SAFTA and WTO. The border blockade is also a breach of Nepal's independence and sovereignty.

Some pictures that show impact of blockade in Nepal and show how India is supporting protesters to incite violence:



Figure 1: long queue of vehicles to get fuels, and over loaded bus.



Figure 2: pelting Nepalese police with stones by protesters from Indian side.



Figure 3: hotels and eateries cooking meals using firewood due to the lack of LPG



Figure 4: pelting stones to Nepalese police, who are not in the scene, from police post of Indian side.

Still smiling and uncomplaining; A glimpse of life in Nepal after India's unofficial blockade.
<http://www.firstpost.com/politics/still-smiling-and-uncomplaining-a-glimpse-of-life-in-nepal-after-indias-unofficial-blockade-2491374.html>

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