Negotiation as a means of resolving the Maoist Conflict

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Several negotiation efforts to resolve the Maoist struggle against the ruling government in Nepal have failed in the past. This failure is a result of positional bargaining, ignoring the underlying interests of pragmatic issues at hand. This paper brings forth underlying issues of the Maoist demands and that of the government, and tries to find a common ground of interest between the two for a negotiated settlement. It outlines the emergence of Maoism in Nepal, discusses barriers to negotiation and provides suggestive measures for a peaceful negotiation between the Maoists, the ruling monarchical government and the third parties, using Principled Negotiation Theory as a guiding principle.

Armed conflict between the ruling government and the Maoists in Nepal have cost 10,000 civilian lives in a time lapse of eight years; it will claim more lives unless immediate action is taken to end the violence. Yet, the conflict doesn’t seem an imminent threat to either party in Nepal: the ruling government or the Maoists. Failure of three negotiation attempts exhibits their unwillingness to resolve the issue.

Conflict is a part of everyday life. When two parties organize to achieve certain goals that do not correspond to each other, there is a disagreement which could be characterized by an incompatibility between opinions or ideologies that we call conflict. “A conflictual relationship is generated by goal incompatibilities stemming from the struggle to acquire resources or positions for the satisfaction of needs.” It has to be kept in mind that if the goals of two parties cannot be met at the same time in a conflict, their desired outcomes are different.

Conflict resolution is what aims to getting to the root of underlying interests and finding a common ground to bring two parties to an agreement in the long run. While settlement refers to putting an end to direct violence without necessarily addressing the underlying causes of conflict, and thus might be short-lived (as the opposition is usually in
haste to put an immediate halt to an array of disagreements), it doesn’t address a permanent end to disputes. Resolution, on the other end, addresses the underlying causes of direct, cultural, and structural violence arising from socio-political and economic structures that perpetuate a situation of unequal power, domination, and dependency (Acharya 2003:20).

The negotiation efforts to solve the conflict in Nepal have failed more than once. What constitutes a good negotiation? How did the conflict emerge?

This research will help solve the humanitarian crisis in Nepal that needs immediate attention. Prolonged war means increased massacre. Continuation of this conflict means deteriorating economic conditions, threats to civil security, political instability, acute poverty, and fewer prospects for development. Immediate threats to democracy and of secession are other possibilities, although these haven’t been the intentions of the movement so far.

Conflict shouldn’t be resolved in a way that merely overturns the one dominant system over another (Jeong 1999:12). Because a social conflict differs in each situation, in order to resolve Maoist conflict in Nepal, it is required that we understand the socio-political and historical context of the emergence of conflict in Nepal. Hence, this research will try to explain the causes of conflict and give suggestive measures to resolve the conflict in light of Principled Negotiation Theory.

**Inception of the conflict**

The emergence of conflict in Nepal is a result of unmet psychological and physical needs aggravated by high levels of corruption and underdevelopment, imbalance in distribution of power, and political and economic power differences that have been translated into racial and ethnic tensions.
Nepal was a protectorate of British India until India’s independence in 1947. The sovereign state of Nepal witnessed India’s hegemony over neighboring states through its annexation of Sikkim in 1950, and the presence of Indian army in Bhutan. Subsequent Indian interference in Nepalese politics gave rise to two distinct currents; political elites that formed the core of the Nepali congress who were educated in India, had a pro-Indian sentiment, who favored Indian diplomacy during political crisis since the formation of state, and anti-Indian sentiment cultivated by revolutionaries who considered interference as Indian imperialism and feared annexation of Nepal. The Maoist movement is also characterized by a deep anti-Indian sentiment ignited by Sugauli Sandhi, the Tanakpur Project case, the India-Nepal Trade Agreement, etc, which exhibit India as a hegemonic force manipulating the state for its vested interests.

A newly democratizing state is vulnerable to internal conflict (Snyder and Mansfield, 2002). Prominent critics have pointed out that the danger of war grows primarily out of the transition from an autocratic to a partly democratic regime, especially when governmental and political institutions that regulate political participation are weak. In the case of Nepal, the peoples of the state were expectant of a gradual change in economic hardships that political leaders had promised during the fight for democracy in 1991. But lack of efficient political institutions, experience, training, and political skills to form a strong framework for legal and economic systems have given way to deteriorating economic conditions, high levels of corruption and political instability, pushing people back to acute poverty that has characterized a rural Nepali life. Economic reforms that advocates promised to the general mass were largely ignored. “People’s government” as democracy is known, was losing its legitimacy. There was no significant reform in these
12 years of democratic rule in any sectors of development. Rural population still lulls in absolute poverty, while the political elites are fighting for their vested interest to remain in power. There is a huge gap between the urban bourgeois class and the rural proletariats. Marked by high levels of corruption, a deteriorating economy, lack of employment opportunities, political instability fueled by opposition angst towards the ruling government, and high exploitation of toiling masses by the ruling elites, this democratic freedom initiated the formation of a frustrated mob. Indifference of the political elites towards the most crucial concerns of the populace is largely responsible for this revolutionary movement which started with an aim to create a proletariat rule. The Maoist movement started with an aim to end this socio-political crisis and provide justice to the toiling masses.

Adhering to popular demands, King Birendra abolished the Panchayat system and lifted the ban on political parties in order to restore a multi-party democracy on April 8, 1990. But the hopes of an electoral government and a new constitution drafted by the popularly elected constituent assembly was threatened by the ruling monarch’s interest to remain in power as a constitutional monarch, and through the inclusion of a monarch, Birenda led elites in the formation of a commission to draft the constitution. Maoists saw this as a compromise to newly won electoral democracy.

Maoist anger about not being able to compete for elections as an independent party is also partially responsible for this revolutionary uprising. This faction tried its best, to the extent of filing a case in the Supreme Court, to be recognized as a national party, but to no avail. Thus denied space in the open polity, they went underground, justified in the process by this constitutional defect.
Maoists feared that a constitutional monarchy is a direct threat to democracy; as long as the army is under royal prerogatives, and the king has a legitimate power to declare emergency in minor consultation with the ruling government, democracy could be taken away. The October 2001 act of dissolving the parliament by the ruling monarch is a demonstrated example of the legitimate power the constitution seemingly grants to the constitutional monarchy. Changing of the constitution has by far remained the pressing demand of the Maoists.

Discrimination against popular participation in government characterized by exclusion of ethnic minorities and Dalits, disrespect for religions other than Hindu, and social strata based on a caste system that gives privilege to Brahmins over all others were also some of the reasons for the Maoist movement. Nepal, a multi-national, multi-ethnic, multi-cultural, multi-religious, and multi-lingual state is characterized by a constitutional declaration of being a Hindu country further stratified by a caste system. The *muluki ain* granted exclusive control to the high Hindu castes who could manipulate political, social, and economic power against other castes and ethnic minorities. Nepalese politics is thus dominated by the minority high caste Brahmins, while Dalits and other ethnic groups that form the majority of population are under-represented in all sectors of politics, governance, and administration. Maoists aim to create a new constitution that is inclusive of all groups, and declare Nepal a secular state, thus protecting rights of all religions and ethnic groups.

**Why is there a conflict?**

In 1996, the Maoists laid out a 40 charter demand before the Sher Bahadur Deuba government, giving a month ultimatum before they declared the People’s War. The government, oblivious to the pressing needs of the people, didn’t deem it necessary to pay
attention to those demands until today, when the state is trapped into a protracted war. There is a conflict because Maoists recognize the need for an economic reform and eradicating all forms of discrimination, emphasize the democratic freedom guaranteed by people’s participation in government, and demand a constituent assembly who will draft a new constitution. The present government has time and again repeated the support for democratic freedom, promised economic reform, and has realized the need to eradicate all forms of discrimination.

Both the parties are opting for similar ideologies. Yet the government doesn’t adhere to the demands of a constituent assembly and a change in constitution. Why? There could be a few significant reasons; first, ruling elites are indifferent to the political crisis created by the Maoist movement, yet are inviting negotiation only because of international pressure. Second, they prefer an armed suppression to a negotiated compromise on their interests. Third, the ruling elites are oblivious to the public political awareness of the present situation of crisis and discrimination, and they are still loathing promises of reform and don’t deem a need for a change in constitution. If they do deem it necessary, at least some underlying interests of both the parties do form a common ground for compromise.

**Actors**

There are contending parties directly/indirectly involved in conflict: the ruling government including the monarch, the Maoist insurgents, and the political parties represented in the dissolved parliament. The monarch covets establishing peace, and believes that Maoists need to be brought into the mainstream politics through constitutional amendments to address some of their demands (Bhattachan, 2003). The Maoists urge negotiation to find a common ground for issues of nationalism,
independence, and territorial integration of Nepal. The means to this goal would be an interim government and a constituent assembly that will draft a new constitution where all three forces can find political space. The parliamentary parties demand a withdrawal of the king’s assimilation of executive powers, a re-institution of the parliament dissolved on October 2001, and demand a partial amendment of the constitution.

Yet the ruling government appointed by the monarch is in armed struggle against the Maoist movement, threatening a civil war in Nepal. The fourth major actor who could influence the escalation/de-escalation of the conflict is an outside international force: either the United States or India. Neither of the states seem to appeal to the Maoist group as one that could act as a good mediator for a round table conference.

**Ending the conflict**

Conflict can be settled by force or coercive bargaining. If settlement is forced upon parties for an immediate solution, in the long run an antagonistic relationship will be created. Force in the form of armed suppression and coercive bargaining or in the form of mediated negotiation are the two options available for bringing an end to this conflict.

Political parties and the interim government should realize that no revolution withers away with suppression. The United States and international forces refuse to give credit to Maoists as a political party, and the group is devoid of freedom of open political participation after Nepali government named them terrorists, although the government pragmatically places them as a political party contending for equal share of power, hence the negotiation efforts. The international forces have been trying to suppress the revolutionary forces by providing arms and ammunitions to the ruling government, while they could have acted as good mediators to settle the conflict through negotiation. We can
correlate this disinterest in the international landscape to urge negotiation to the dynamics of international politics where Hans J. Morganthau talks about balance in power in international politics through “game theory.” Nepal is of little interest to world politics yet because of its geo-strategic location that borders the giants of China and India. An authoritarian regime in Nepal that has the populace under control would be preferable to a politically aware democratic system of government.

While strong-armed suppression might end the conflict (leaving high casualties), the framework of political ideology that has been the driving force of the masses will still remain unless there is a dramatic change in the political landscape. Ethnic, cultural, or civil forms of violence will escalate time and again as a means to voice their frustration towards the ruling government unless the underlying problems of conflict have been identified and solved. In an ethnically diverse state that is frustrated with political suppression and economic turmoil, there are chances of demands for secession. Israeli-Palestinian conflicts, armed conflict in Chechnya-Herzegovina, Sierra Leone, and in certain other parts of Africa are living examples of failed armed suppression.

The alternate option therefore will be to face the opposition in trying to understand their needs, and to find a common ground where both their interests and the interests of the government coincide. The term negotiation shouldn’t imply a situation where two parties meet and the hard negotiator walks out with all he wants whilst the other is utterly betrayed. Each party must look in terms of what the other wants.

**Barriers to negotiation**

The third negotiation effort between the government, the parliamentary party, and the Maoists to create a base of common interests for a compromise has failed. Roger Fisher
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and William Ury (1981) argue that parties do not want to negotiate as long as the other best alternative is available (BATNA- Best Alternative To a Negotiated Agreement). If the other side has a stronger bargaining position, and if the negotiation is not able to protect the party against making an agreement they should reject, the party should refrain from making negotiations. If the benefit of negotiation is higher than the cost, it is most likely that parties will adhere to it; likewise, reversing the equation will hold parties from having negotiations. Evaluating other party’s BATNA also cautions the party before going into negotiation; if the ‘other’ has good alternatives to negotiated agreement and seems optimistically prepared if no agreement is made, this will prepare the party what to expect out of the negotiation.

Positional bargaining is another major barrier to a fair negotiation. Parties tend to focus in achieving the end position without carefully analyzing its underlying interests. A and B demand X and Y respectively, but when we analyze the actual concerns that gave rise to positions X and Y, it could be that M and N constitute X, and M and O constitute Y. We can find a common ground of interest M, and the rest will have to be compromised. Analyzing underlying concerns will create a basis for good negotiation.

Separating people from problems constitutes another core of negotiation. Emotions, deeply held values and norms, differing ideologies, and backgrounds usually put us in an unpredictable situation. However, the ability to not confuse people with actual problems and being able to provide equal attention to people both ensure the beginning of a good negotiation. While it is only natural to have concerns over an image the other party/individuals in a party reflect, it is wise not to confuse relationships and problems. Maoists might point out to the failure of democracy in Nepal for example. Pointing out that
years of democratic governance was unable to create sustainable development will give a sense of insecurity and create hostility on the part of the ruling government and the parliamentary party at the negotiation table. Hard negotiators that are unwilling to compromise yet want the other party to give away their interests also make it hard for an agreement.

**Negotiating the Maoist Conflict**

The Principled negotiation developed at the Harvard Negotiation Project claims that parties look for mutual gains whenever possible, and wherever interests conflict, the party should insist that the result be based on some fair standards independent of the will of either side (Fisher and Ury, 1981). A fair negotiation can be reached if an agreement is possible, is efficient, and doesn’t damage the relationship between parties.

Negotiations generally fail because parties most often argue over final positions and fail to address the underlying interests. They try to improve the chance that any settlement reached is favorable by starting with an extreme position and stubbornly holding on to it. Positional bargaining is a top-down approach to solving a problem; it doesn’t look at the underlying causes of the problem, nor does it try to reach to the grass-root level that created the problem in the first place. It just looks at the final problem as an end in itself. This can endanger relationships if parties try hard not to give in, and each side tries to force the other to change its position through sheer power. We can analyze three most noted positions and their underlying concerns demanded by the Maoist group.

One of the Maoists demands is the formation of a multi-party government and the army under the command of the elected government. The need for a multi-party government has arisen from the presence of different parties contending for power.
Maoists have given up other demands, like the overthrow of monarchy possibly out of the realization that no one party will be willing to give up power and come to a negotiation table merely to fulfill the other party’s needs. Politics is a power-sharing game, and unless the negotiation proves mutually beneficial to both, with slight compromises, neither party will be willing to negotiate at all. Likewise, the government wants the Maoists to handover their weapons and apologize even before they agree to a round table conference for a negotiation. This seems unrealistic, as no revolutionary group will be willing to hand in their weapons for negotiations, neither will there be any need for a negotiation once the group has surrendered. Hence the monarch and the ruling government should be willing to “share” power with other forces for a multi-party government.

Maoists are opting to join the political mainstream for legitimate power sharing with the government through the formation of a constituent assembly. Their strategies have changed and demands softened; they are willing to share power with the monarch as opposed to the former demand of removing the monarch from parliamentary politics and the constitution completely. The underlying interest behind the formation of a constituent assembly is to reinforce the parliamentary democracy by diverting power from the active monarch.

The idea of creating a new constitution emerged after scholars and elites started realizing that the constitution upholds certain ideologies and norms that are a hindrance to a free, democratic society. Declaring Nepal a Hindu country in itself is discriminatory to the other major Buddhist worshippers and numerous minor religions that form the Nepali populace at large. Although people have religious freedom in Nepal, the aim is to give equal respect to all religions through a fair constitution. The formation of new constitution
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aims at declaring Nepal a secular state giving importance to all religions and different ethnic, religious, and cultural groups in Nepal. Another objective is to grant constitutional legitimacy to the monarch. Although the monarch has been constitutional in Nepal since the declaration of democracy in 1991, the army is still under royal prerogatives and the constitutional monarch has the right to declare emergency and mobilize the army anytime, with minor consultation with the ruling government. The dissolution of the parliament in October 2001 by the ruling monarch in order to preserve democracy made it clear that the government doesn’t operate with free will of the people, but by the consent of the monarch. By emphasizing the minimal role of the monarch in Nepalese politics, Maoists want to reinforce this legitimacy through a constitution that can be strictly followed.

The idea of holding a referendum is to be inclusive of the populace during decision making processes in governance. Nepal in fact is a liberal democracy where public participation is highly valid, especially during a controversial situation. The Maoists want a referendum on issues of constitution and constituent assembly and on the question the role of monarchy in Nepalese politics so that the people will have a final say. The feasibility of having a national or a regional referendum every now and then is very small. Yet, if both the parties find it feasible, it can be carried out for once during this crucial decision making process. A high possibility is that the ruling government might refrain from holding a national referendum, as the possibility of Nepalese populace favoring monarchical rule is very small. Referring to its feasibility, even the most liberal system of democracy is hardly known for holding referendum for public opinions because of the difficulty of covering a large population base. As an alternative to a referendum, other
forms of public participation can be implemented at local levels where people will have their say for local/national issues.

Rational Choice Theory assumes that humans are purposive and goal oriented, humans have sets of hierarchically ordered preferences, and in choosing lines of behavior, humans make rational calculations provided that they are aware of all possible options. Rational Choice Theory has varied approaches: Decision Theory centers on cost-benefit analysis, where individuals make decisions without reference to anyone else’s plans, and Game Theory that analyzes how people make choices based on what they expect other individuals to do. If the cost of civil war is higher (facing armed suppression, loss of popular support etc) than the benefits of a negotiated compromise (share of power, amendment of constitution etc), Maoists will most likely settle for an agreement. If the government deems it necessary to stop the conflict to save human lives, it might be willing to compromise at the cost of handing over some power that will still reap them greater benefits. Each party might take steps depending on prior calculations of the other’s reaction to it, as proposed by Game Theory. If the Maoists foresee that moving towards the capital city for a civil war will initiate the government to take stronger measures for armed suppression, chances are that Maoist guerillas will suffer a loss, and they will prefer to stay out of the city. The practice of conflict resolution anchored in a Rational Choice approach entails a special sort of cognitive task called “problem solving” leading to the discovery or creation of choices that mutually benefit all parties of the conflict (Jeong 1999). An agreeable solution can be found by problem solving that is designed to explore a mutually acceptable agreement. Agreement can be achieved by increasing resources available for the satisfaction of both parties’ needs and examining underlying concerns of both parties.
Similarly, the Maoists will have to understand that power sharing with the monarch will be a prerequisite to reaching a negotiation; if their first demand is complete removal of the monarchy from the national political landscape, the monarch led ruling government might not even be willing to hold negotiations. It has its own vested interests, so do the Maoists and other parties. Facing each other at a negotiation table itself connotes that two or more parties are ready to look into each others’ interests and find a common intersection where they can settle down for an agreement. Instead of opting for a new constitution, the revolutionary group, as it has pointed out, should urge the opposition to amend the constitution for certain empirical issues. Likewise, the emphasis on constitutionally legitimizing the limited role of constitutional monarch and the handing over of the army to the elected parliament from the control of the royal palace can be settled with a negotiation. The monarch should be ready to hand over some power to the popularly elected government. And the Maoists should be willing to compromise certain interests, keeping in mind the opposition will also be compromising in its unilateral share of power.

Willingness and the question of how compelled both parties feel to end the conflict for varied reasons is what will determine the success of negotiation. The failed attempts of negotiation displays that not much communication was made possible between the parties. Also, so far they have acted as hard negotiators that weren’t willing to settle down for anything less than what they demanded.

**Conclusion**

Negotiation that entails sitting face to face opposite each other to have a talk over a matter doesn’t mean that one side arbitrarily agrees to the demands of the other side. Negotiation first needs the understanding of underlying interests. Maoist demands are
positional; we need to get to the pragmatic issues beneath these demands. They demanded removal of monarchy earlier to ensure that the constitutional monarchy doesn’t take the form of absolute monarchy. They are demanding a new constitution to be inclusive of all races and ethnic groups in national development and ensure participatory democracy. As mentioned earlier, there are ways of reaching to solutions that fulfills both interests, like partial amendment of the constitution, power-sharing through the formation of a multi-party government, etc. The core of negotiation, however, is willingness. If either side doesn’t realize the pressing need to bring this conflict to an end, their talks will still leave them with more appealing alternatives, and negotiation will not be possible. Hence the important question that we should ask ourselves today is: is the conflict worth the lives of civilians it has taken? If it is not, both the government and the Maoists should be willing to resolve the conflict; a peaceful means at hand is negotiation.
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