

Opportunities Lost on the Path to Army Integration in Nepal

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It was during the third week of November 2005 that I first heard from the lips of Maoist Chairman Prachanda, in the presence of Baburam Bhattarai and then Party spokesperson K.B.Mahara, his explanation of the new Party strategy and how they had come to it. The Chunbang Central Committee meeting had taken place the previous month; the 12-Point Understanding with the Seven-Party Alliance had been negotiated and was about to be made public.

His party, Prachanda said, had never intended a long war: the issues were to be solved politically. Classical insurrection was not possible; Nepal's Maoists now understood the world in a new way in the twenty-first century, free of old dogma. Multi-party democracy was necessary; they had made many mistakes, including so many undesired killings, but had now engaged in rigorous self-criticism. They had called a unilateral ceasefire (at the beginning of September) because they wanted to stop and have discussion and training within the party. If continuing killings of their cadres by the Royal Nepalese Army (RNA) forced them to end the ceasefire, they would attack only the security forces. They were against terrorism, but not the right of the masses to rebel.

Mitigating the conflict

The Nepal Office of the United Nations High Commissioner for Human Rights had been established in May 2005, with the dual objective of addressing the violations of international humanitarian law being committed on both sides of the armed conflict and the infringements of democratic rights intensified by King Gyanendra's state of emergency. While the king's government was facing condemnation at the UN Commission on Human Rights, the Maoist leadership, as well as leaders of the main parliamentary parties, was persuaded by civil society activists to support publicly the

1 The views expressed are solely those of the author and do not represent the official views of the UN.

call for international human rights monitoring. The Maoist leaders had long been in favour of UN involvement in Nepal; they had watched closely statements by Secretary-General Kofi Annan calling for inclusive dialogue to end the conflict, and had responded positively to the low-profile good offices carried out since 2003 by the UN's Department of Political Affairs. Now the agreement signed by High Commissioner for Human Rights Louise Arbour and the king's Foreign Minister entitled her office to 'engage all relevant actors, including non-state actors, for ensuring the observance of relevant international human rights and humanitarian law'. My first communication to Prachanda was met with a letter of welcome: 'On the course of the armed struggle based on the clear ideological and political purpose under the leadership of our party, we are aware to eliminate the irrational violence as possible. But we have self-criticized publicly on the innate and partial errors on the course of war and have been rectifying them too. I would like to let you know that our party is ready to assist you fully for the true and fair investigation of any incidents of human rights abuses.'

Only once in my ensuing dialogue with the Maoist leadership was the battle at Khara (which preceded our arrival) referred to, with a denial that it represented a defeat, as propagated in Kathmandu. But the battle at Pili was one of OHCHR-Nepal's first major challenges. Our appeals that the captured RNA soldiers should be treated fully in accordance with international humanitarian law evoked public and private assurances of their well-being, and in common with past practice, the International Committee of the Red Cross arranged their handover. The RNA, however, alleged that of the 40 of their men they initially said had been killed, the majority had been shot after having surrendered, and that an officer had been mutilated. OHCHR staff trekked to meet the released soldiers, who were returning from the hills with ICRC delegates, in order to interview them before their accounts could be affected by that of the RNA public relations department. We also ensured that autopsies were carried out by Nepali forensic specialists who had shown their competence and integrity in previous high profile cases, although not before the dead bodies had been put on display in the public relations exercise condemned by Sam Cowan (see Cowan, this issue). The autopsies did not confirm torture or mutilation, and could not determine conclusively whether some had been killed after being captured, although they recorded a high proportion of firearm wounds to the head.

Objective human rights investigation can limit the propaganda on both sides of armed conflict, but it is more important to prevent the actual commission of abuses. The UN had significant leverage with both sides. The RNA was proud of its long-standing role in UN peacekeeping, which brought great financial benefits to the institution and its officers. Visiting Nepal in early 2005, High Commissioner Arbour had warned publicly that the Army's widespread involvement in extrajudicial executions, disappearances and torture could threaten its peacekeeping participation. With the arrival of OHCHR-Nepal, disappearances became rare, and eventually all those who had been detained in military barracks were transferred to civilian prisons. On the other side of the war, the Maoists were courting international respectability and an alliance with the parliamentary parties, requiring respect for human rights. Their unilateral ceasefire brought a sharp fall in conflict-related abuses, but the king rebuffed international and domestic appeals to reciprocate. When the PLA resumed hostilities, although serious humanitarian law violations on both sides continued, the behaviour of both armies in the field seemed to be mitigated by awareness of OHCHR's monitoring.²

Armies at peace: opportunities lost

The OHCHR presence at the demonstrations which climaxed in the *Jan Andolan* of April 2006 was a factor in mitigating the excessive use of force against them, and in the reluctance of the RNA to further tarnish its reputation in bloody confrontation, leading to its eventual advice to the king to yield power. The UN was then quick off the mark in opening discussions on its possible future role, especially the commitment in the 12-Point Understanding that while elections to a constituent assembly were held, the two armies would be kept under the supervision of the UN or a reliable international body. By mid-May, UN political, military and human rights officials had discussed this in Kathmandu and with Maoist leaders, who were still in Delhi. A first formal request to the UN from the Seven-

2 See *Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office, including technical cooperation, in Nepal* (E/CN.4/2006/107, 16 February 2006); and United Nations Office of the High Commissioner for Human Rights, *Nepal, Investigations into violations of international humanitarian law in the context of attacks and clashes between the Communist Party of Nepal (Maoist) and Government Security Forces, January-March 2006*.

Party Alliance government provoked strong protest from the Maoists by referring to ‘decommissioning’ their arms, to which they had made no commitment in the 12-Point Understanding or since. But eventually agreement was reached, in the Comprehensive Peace Agreement (CPA) and the detailed Agreement on Monitoring the Management of Arms and Armies (AMMAA)—the latter facilitated by the UN—on modalities for monitoring the two armies, restricted to barracks and cantonments, as well as Maoist weapons (and a symbolically equal number of weapons of the Nepalese Army) stored under UN surveillance.

There is no more crucial issue at the end of any internal armed conflict than the future of those on both sides who have fought it. At the root of the difficulties in Nepal’s peace process which are still unresolved four years later is the failure fully to negotiate this difficult issue at the time of the CPA. The CPA provided for the future interim government, which was to include the Maoists, to establish a special committee to ‘integrate and rehabilitate’ Maoist combatants, integration being understood by the negotiators on both sides, notwithstanding later interpretations, to mean integration into the security forces, including the (no longer royal) Nepalese Army. The interim government was also to draw up an action plan for the ‘democratization’ of the Nepalese Army, the CPA envisaging the need to ‘determine the appropriate number’ of the army—i.e. to downsize it to peacetime requirements and affordability—as well as to develop its ‘national and inclusive character’—a reference to the need to recruit from under-represented groups.

In the Joint Monitoring Coordination Committee established to oversee the AMMAA, thanks to skilful chairmanship by the Chief Arms Monitor of the UN Mission in Nepal (UNMIN), Brigadier-General Jan Erik Wilhelmsen, the hostility between the two armies which political leaders had had to contain during the negotiation of the Agreement soon thawed into wary cooperation. But despite rhetorical reminders that those who had fought on opposite sides were all Nepalis—many (below the officer ranks) of similar backgrounds—opportunities to bring the armies closer together were lost. UNMIN’s wish to use tripartite joint monitoring teams was constrained by the Nepalese Army chief’s refusal to allow People’s Liberation Army (PLA) representatives to share in monitoring Nepalese Army barracks. Joint monitoring teams were eventually trained and deployed, and proved the ability of members of the two armies to work together well

under UN auspices, but could only be used for confidence-building and investigations of alleged violations of the AMMAA away from the barracks and cantonments. Combatants from the cantonments and soldiers of the Nepalese Army could have worked side by side to reconstruct what had been destroyed in the conflict—PLA commanders repeatedly told us that they wanted to work for the state payments they received. The specialized medical facilities of the Nepalese Army could have been applied to treat PLA war injuries. Much more could have been done to provide access to education and training that would enhance the future of ex-combatants.

The immediate focus in implementing the AMMAA was on getting the weapons stored. The PLA presented a total of 3,475 weapons to UNMIN, and when this figure was made public it was widely asserted that this was far short of the likely total, especially when it was contrasted with 31,000 claimed combatants. The Nepalese Army had already argued in the negotiations that only a Maoist combatant who produced a weapon should be eligible for registration. This bore no relation to reality, as Sam Cowan's observations regarding an army 'woefully weak in firepower' and the scarcity of rifles available for even the most major PLA operation confirm (see Cowan, this issue). It was perfectly well known that the PLA had fought the war with weapons which were greatly limited in their number and sophistication: most were captured from the security forces and others were home-made. The Nepalese Army had provided UNMIN with a list, by type, of 3,430 weapons 'looted' by the Maoists from the Army, Armed Police Force and Nepal Police, 781 of which were not identified among those registered; some losses were of course to be expected. It is unlikely that any insurgent force has ever revealed its full weaponry at the immediate end of a conflict, but the inevitable controversy in Nepal reflected exaggerated suspicions, and caches of hidden Maoist weapons have yet to emerge. The heavy reliance on socket bombs noted by Sam Cowan was reflected in the collection and UN-assisted disposal of over 50,000 explosive items at the cantonment sites.

The Maoists' credibility was shattered—and UNMIN's responsibility for registering and verifying Maoist combatants greatly complicated—by the fact that the number of persons they brought into the cantonments was hugely in excess of any reasonable estimate of the real strength of the PLA. Such estimates, including that of the RNA, placed it towards 10,000 by mid-2005. It was well known that, in addition, the CPN(M) had tens of

thousands of locally-based militia, some of whom had been mobilized to support the PLA in major attacks. In October 2005, the CPN(M) decided to expand the PLA from three to seven divisions, bringing in some of the militia and political cadres. These would become eligible for registration at the cantonments and eventual integration or rehabilitation when the 25 May 2006 signature of the Ceasefire Code of Conduct, which prohibited further recruitment by either army, was agreed to be the cut-off date for eligibility to be regarded as a Maoist combatant.

As the cantonments were being established in late 2006, it was widely reported that the Maoists, in violation of the agreements, were increasing their numbers by bringing in young people, attracted by promises of salary payments and future recruitment into the security forces. Finally, over 31,000 people presented themselves for registration at the cantonments. UNMIN's 'verification' would reduce this number to 19,602, initially accepted as eligible combatants by both sides, but later to become the subject of major controversy. In May 2009, a video was released of a January 2008 address by Prachanda to members of the PLA, in which he appeared to boast that the Maoists had hoodwinked UNMIN into verifying a vastly inflated number of combatants, when the true strength of the PLA had been between 7,000 and 8,000. The widespread assumption in the Kathmandu media that this declared strength was to be set against the 19,602 verified by UNMIN took no account, however, of the expansion of the PLA between mid-2005 and the ceasefire.³

Meanwhile, the Maoists announced the re-establishment of their Young Communist League. It became clear that the Maoists had kept some key PLA commanders out of the cantonments to provide leadership to the YCL, which was the new home for other former militia and younger cadres. Privately, Maoist leaders justified this by the need to maintain discipline over cadres who would otherwise cause problems, and pointed out that only the PLA, and not the Maoist militia, had had their future addressed in the negotiations, while the different components of the Maoist movement had in fact been fluid. Maintaining discipline was, however, only part of the motivation, as would become clear from the strong-arm role of the YCL, especially during the constituent assembly elections.

3 For a careful analysis of PLA numbers and contextualization of the video, see International Crisis Group, *Nepal's Future: In Whose Hands?* Asia Report No.173, 13 August 2009, pp.9-11.

The future postponed

The cantonment of the Maoist combatants and corresponding restrictions on the Nepalese Army were initially envisaged as arrangements for a short period during which an early constituent assembly election would be held and the future of both armies decided by an interim government that would include the Maoists. But the CPA had only papered over fundamental disagreements between the Maoists on the one hand and other political parties, the Nepalese Army and India on the other. The UN, for whom decisions on the future of the armies were needed for its own exit strategy, pressed the parties to commence the processes they themselves had agreed: the formation of the special committee to supervise, integrate and rehabilitate the combatants of the Maoist army, and the formulation of the action plan for the democratization of the Nepalese Army. The special committee was established by the Council of Ministers in mid-2007, but it was still-born, meeting only once before the election. The Maoists seemed at times to want to press ahead with the special committee, especially when they were reflecting the frustration of those in the cantonments about the uncertainty of their future. But ultimately their leaders preferred hard decisions to be left until after the election: the continued existence of their army strengthened their hand while the election was being held and beyond, while settling its future was bound to be a difficult issue inside the party and the PLA. The other parties assumed that their position would be strengthened and that of the Maoists weakened after the election, when the issue of the armies would be easier to solve on their chosen terms. This view seems to have been shared by India, but proved a fundamental miscalculation.

By the time the special committee was re-established by the Maoist-led government after the election, the determination of the Nepalese Army to assert itself and resist change had become the major factor which would contribute to the downfall of Prachanda as prime minister and the ensuing political stalemate. At the same time as its Chief lobbied publicly and privately against the integration of PLA combatants, the Army insisted on undertaking new recruitment to fill vacancies, in violation of the agreements, in order to maintain its authorized strength, which had more than doubled after it had entered the war and stood at nearly 96,000. Prime Minister Girija Prasad Koirala had wanted a UN presence not only as an influence on the Maoists, but also because of his mistrust of

the king's army. But as holder of the defence portfolio, he shared India's strong view that the army should be preserved as a bulwark that might yet be needed against the Maoists. The army declared that its acceptance of the peaceful transition to a republic was evidence of its democratization, when in fact the end of palace control of the army left it more autonomous and unaccountable than ever. When Prachanda succeeded to the head of government, India again warned that the preservation of the army was for them a red line. The Maoists failed to advance proposals which could persuade other parties that they had a common interest in democratic control of the army; instead, their attempt to replace the army chief, whom they regarded as an insubordinate political actor, with his more amenable deputy played into fears of 'state capture' and led to India's determination to exclude the Maoists from government. With the largest party—and one side of the peace process—excluded from power-sharing, the prospects further receded of the cooperation among parties necessary for the integration and rehabilitation of the Maoist combatants, or indeed the promulgation of a new constitution. Emboldened by its victory and by the support it could rely on from the new government, the Nepalese Army felt free to lobby openly to be removed from the obligations of the AMMAA.

Thus, in late 2010, Sam Cowan's conviction (see Cowan, this issue) that bringing PLA combatants together with elements of the present Nepalese Army to form a new army in Nepal could be achieved with the right military and political will, seems far from current possibilities. Efforts to offer experience from other parts of the world, which he rightly says could assist, have foundered on political divisions and Nepalese Army resistance. India believes that its own experience displays other models for integrating former rebels, outside the state army. Rather than suitable confidence-building, all involved have made generous contributions to the growth of mistrust which belies the *Jan Andolan's* promise of a New Nepal.