

Kathmandu School of Law Review

ISSN 2091-2110

Volume 5

Issue 1

April 2017

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China South Asia Connectivity: Reflections on Benefits of OBOR in Nepal from International Law Perspective

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The Idiosyncratic History of Friendliness and Cultural Proximity in Sino-Nepal Relation

An abundance of records from antiquity show that Nepal existed as a southern Himalayan state with a long and uninterrupted history of independence. The *Pashupati* area, with its numerous temples including the main temple dedicated to Lord Shiva, is one of the ancient locations identified with the ancient history of the nation of Nepal. As described by Dilli Raman Regmi, a noted historian of ancient Nepal, the present site of *Pashupati* was divided into two locations, the main temple and the surrounding area where a number of other temples surrounded the main temple. The latter location was called *Deopatan*, literally meaning as the city of Gods.¹ An adjacent location, known as *Cha-babil*, which is currently known as *Chabel*, is of significant importance in understanding the antiquity of Nepal as a nation. Mr Regmi refers to a chronicle that describes *Deopatan* as a site where Magadha Emperor Ashoka, on his visit to Kathmandu, met with Nepal's King.² A legend from the Chronicle mentions that King Ashoka founded a monastery close to the north of *Deopatan* and left it in the care of his daughter Charumati, who married the king of Nepal.³ King Ashoka ruled Maghada before 300 BCE. This historical description is evidence of two important facts about Nepal. Firstly, Nepal existed as a nation before the reign of Ashoka in Maghada. India was not yet founded and the present Indian Territory consisted of several kingdoms ruled by independent kings. Nepal, thus, is obviously a nation with a history of antiquity in South Asia. Secondly, the visit of Emperor Ashoka suggests that Nepal was a nation of importance in that time. This fact is proved by the fact of the marriage of Emperor Ashoka's daughter to the King of Nepal. As many historical records have shown, the marital relation between the families of two kings implied an intention to establish good relations between them. It presumably guaranteed a situation of non-interference and absence of fear of war. Obviously, such relation could only occur between two equally important or

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¹ D.R. Regmi, *Ancient Nepal*, Rupa & Co in association with Dilli Raman Regmi Memorial Foundation, 2007, New Delhi, p.8.

² *Ibid.*

³ *Ibid.*

competent nations. The fact that this marriage was agreed to has two more significant connotations. Firstly, Nepal was a potentially powerful nation, and, secondly, for this, Nepal required a vast or significantly bigger territory. Some historical records suggest that Nepal occupied a territory extending from somewhere in Kashmir in the west to Kamarup, presently known as Assam, to the east. Most importantly, even the Maurya dynasty, which once ruled the entirety of present-day India, extending from Afghanistan to Madras, disappeared after King Ashoka's rule. India broke apart into several smaller kingdoms. Nepal, however, remained unaffected and integrated and continued to have its influence on the politics of ancient South Asia. This has been proved by Samudra Gupta's comments on to Nepal. Gupta was one of the most powerful rulers of ancient India and was the ruler of a frontier kingdom at a time when most other kingdoms such as Vrizzi, Kosla, and Kusanas had already lost their existence to the Gupta Empire.⁴ Some accounts of Xuan Zang, a Chinese traveller who travelled to ancient Nepal, also claim that Nepal's territory in this period was vast. As mentioned by Cunningham, the town of Nandagram of North Bihar, close to Champaran, was close to the border of Nepal in the south-east.⁵ During the early period of Lichhavis, the territory of Nepal was extended upto *Vaishali*, a location on the banks of the Ganga River but it was invaded by Chandra Gupta II and annexed to the Gupta Empire. The Tarai region, however, remained as Nepal's territory. Harsabardhan, another powerful Gupta king, invaded many other kingdoms and created a bigger Maghada. He too, however, did not extend his territory beyond present boundary of Gorakhpur district of India.⁶

Nepal as such, was an important representative of the Asiatic civilisation, primarily consisting of the Trans-Himalayan culture, languages, Hindu and Buddhist religions and Kirati pantheism. Nepal's socio-cultural life system was not merely an offshoot of Brahminic Hinduism. These extraordinary attributes of Nepal along with its diversity and uniqueness was an attraction to the Chinese Empires in the North. As a matter of fact, scholars and travellers began to arrive in Nepal since ancient times for the purpose of studies and to make pilgrimages. The rulers of China had information on the strategic importance of Nepal as a kingdom on the foothills of Himalaya, and it maintained a respectful position even among the Kings of South Asia.

Nepal's glory of development appeared during the reign of *Lichhavis*, a dynasty that overthrew the *Kiratas*.⁷ The Chinese scholars and travellers began coming to

⁴ Ibid.

⁵ Chunnigham, *Ancient Geography of India*, p.445 cited in D.R. Regmi, *Ancient Nepal*, Rupa & Co in association with Dilli Raman Regmi Memorial Foundation, 2007, New Delhi, p.2.

⁶ K. P. Jayasawal, "Chronology of the History of Nepal B.C. 600 to A.D. 800 in *Journal of Bihar and Orrisa Research Society* (JBORS) XXII (September 1936), pp. 157-264.

⁷ Kirat dynasty's 26 kings ruled Nepal. They ruled over one thousand years. The first Kiratruller was Yellung Kirat, who overthrew the last king of Mahispapala from the region beyond the River Dudhkosi which extended as far as Bhutan to the east. They probably took

Nepal when the dynasty flourished. It appears that by about the 3rd century C.E., Nepal already enjoyed a highly developed culture and social life. It indicates that social life during this time was perfectly harmonious. Religions such as *Kirat's* Mundhum, Hinduism and Buddhism flourished with perfect harmony side by side. *Kirat* population in Kathmandu Valley was influenced by Hinduism, whereas *Kiratas* of eastern Himalaya continued to be guided by their original cultural rituals.⁸ As it is evident, the Lichhavi flourished the culture by their superior contributions. The introduction of a civilised legal justice system was their one of the most significant contributions. This civilised justice system provided protection to the citizens as well as visitors who came to trade. They brought better techniques and skills of agriculture and weaving with them. The art of sculpture was refined during their rule. The Lichhavi also developed the structure of governance which included a wider participation of people in the system of governance. They initiated a system of local government by introducing an institution known as *Panchali*. The *Panchalis* were the representative committees of the village responsible for the administration of local affairs.⁹ The autonomous bodies of people managing private or public welfare funds or charities were called *Gosti* (the historical origins of the present-day *Guthis*).¹⁰ This system was unique in South Asia and was probably one of the factors that attracted people from other countries to come to Nepal. In particular, the Chinese scholars who visited Nepal in those days have vividly described these attributes of Nepal.

The civilisation of Nepal stood, in this way, as a unique development in the Himalayan range of South Asia. Therefore Nepal is a country, which had a good civilisation with its own idiosyncratic features, which is largely unique and different to the mainstream *Brahminical* culture that flourished in the South. Nepal maintained a friendly relation both with India and China. While India still had not made any formal communication with China, Nepal was a country in South Asia, if not in the entire Asian continent, that had a unique relation with China and since antiquity since these two nations had significant cultural similarities.¹¹ Historical facts present that Nepal and China have had

over Kathmandu; See, Rishikesh Shaha, *Ancient and Medieval Nepal*, Ratna Pustak Bhandar, Kathmandu, 1992, p. 7.

⁸ Ibid (n.4), p.6.

⁹ Rishikesh Shaha, *Ancient and Medieval Nepal*, Ratna Pustak Bhandar, Kathmandu, 1992, p. 25.

¹⁰ Ibid.

¹¹ Fa Xian was the first Chinese monk to visit Nepal. He visited Nepal in between 399 and 413 (AD). He came to Nepal via Ghandhara (present Peshawar) and Kashmir. Nepal, as revealed by some historical evidence, was in that time bordered Kashmir as its western frontier. The *Bharatvarsa*, south to Nepal, was divided into many dozens of independent Kingdoms, the Magadha being the most dominant one. The modern India was absent in the history, as the modern India was a product of the colonial regime in which the East India Company erected a 'nation called India for the purpose of centralizing the government for convenience of tax collection'. The second Chinese Scholar to visit Nepal was Xuan Zang, who is said to have spent considerably longer period of time in Nepal and studied the *dhyana* Buddhism (meditative Buddhism). When he was returning to China, Yunan, a Chinese mission of

communications for at least 1500 years. Three important historical events justify this assertion. Firstly, the Chinese *Guru Manjushree Bodhisattva* visited Nepal and it has been a popular legend among the people of both countries that he drained out the water of Kathmandu, which existed as a big lake in that time, by cutting open the gorge of *Chovar*. He thus made Kathmandu Valley feasible for settlement by human beings.¹² Geological evidence also confirms that the valley was indeed a lake at one time.

This legend connects Nepal and China as far back as 5000 years ago. The legendary stories are popular both in China and Nepal.¹³ Secondly, the Nepalese *Dhyana* Buddhism travelled to China as Fa Xian (405 C.E.), Yuan Chuan (631-632 C.E.) and Xuan Zang (629-643 C.E.) visited Nepal and they were greatly impressed by it. The Buddhism imported from Nepal had deeper influence among people in China. In between 1368 C.E. and 1644 C.E., after the demise of the Ming Dynasty, China sent five missions to Nepal, whereas seven missions from Nepal visited China. Two Nepalese Buddhist monks, Kasyapa Matanga and Dharma Raksha, visited China as early as the 1st century, and another Nepalese monk Bhuddhabhadra visited China in the 4th Century.¹⁴ These missions played a crucial role to establish a direct relation between Nepal and China. Today, the *Ch'an* (Chinese pronunciation of *dhyana*) Buddhism is recognised as an official Buddhist faith in China.¹⁵ The trade and cultural communications between Nepal and China's Tibet were deeper than people have information today. As revealed from historical documents such as the *Ch'intand-shu* (Old History of the Tang Dynasty) and the Tibetan documents found at *Tun-huang*, containing a chronology of events in Tibet from C.E. 650 to 747; the Tibetan rulers came to Kathmandu very often and stayed as the guests of Nepalese kings.¹⁶ In this manner, Nepal has played a crucial role in shaping the cultural life in China.¹⁷ The visit of *Araniko*

twenty men led by Li I-paio and Wang Shuan Tse was head to Nepal by a new route which had never before been used for the journey between Nepal and China. This route is Kerung pass. This is how Nepal and China got into cultural a deeply entrenched cultural tie. No other country in South Asia has such unique tie with China, nor does China have such tie with any other country in South Asia. However, this unique historical relation is not emphasized by the both countries, which is unfair.

¹² Ibid (n. 9), p.6.

¹³ China and Nepal share the root of the culture. The naked observation captures some similarities; one such being the architectural structure of temples in China and Nepal. Multi-layered roof with pagoda style is a popular culture of constructing temples in both China and Nepal. The study in this regard has, however, not been done on the both sides.

¹⁴ Sundar Bhattarai, "Connectivity between China and South Asia", Concept Paper, Conference on Connectivity between China and South Asia in the Perspective of OBOR Initiative, Kathmandu School of Law, 17th March, 2017.

¹⁵ See, for more detail, Michael C. Brannigan, *The Pulse of Wisdom*, Wadsworth/Thomas Learning, 2000, Belmont, USA, pp. 31-33.

¹⁶ D. R. Regmi, *Ancient Nepal*, (1st Ed.) Calcutta, Firma K.L. Mukhopadhyaya, 1960, p. 151.

¹⁷ The inter-cultural exchanges and communication among Nepal, China and India is indispensable. The people of three countries have fashioned a cultural tie which is unique and penetrating. Each has influenced the development of other's culture and way of life.

(*Anigou*) to Beijing to construct 'bai ta' temple (White Pagoda Temple) is clear evidence of the fact that the *dhyana* (ch'an) Buddhism of China has its roots in the Nepalese sect of Buddhism. Thirdly, two parallel chains of events are indicative of the strong relations that existed between China and Nepal. Firstly, the princess *Vbrikuti* was married to King *Srongtsan Gyampo*, the ruler of Tibet,¹⁸ which was a suzerainty of the Empire of China, and, secondly, Nepal assisted China to rescue a group of 22 scholars who, while visiting Magadh, were arrested by Arjuna, who had usurped the throne after Harsabardhan's death. Some of the scholars were killed and others were imprisoned. King Naraendradeva, on request of Chinese Emperor, sent a troop of seven thousand cavalymen to rescue the detained Chinese scholars and released them to bring back to Nepal along with Arjuna, the culprit.¹⁹ This man was then sent to China for punishment. King Nerendradeva had, as it has been illustrated in the annals of history, a higher recognition among the kings of Lichhavi dynasty. The following two facts concerning Nepal-China relations in trade are worth mentioning:

- a. At the time of Narendradeva, Nepal was a prosperous and powerful country. As described by the Chinese emissary that travelled Nepal via Kerung, Narendradeva's palace, called *Bhardadishava*, was beautiful and majestic. It was seven-storied building roofed with plates of copper. Its metal work, balustrades, screens, and beams were decorated with semi-precious stones, and in the four corner of the ground floor were crocodile heads of gold with water flowing from their mouth in a continuous stream. This grandeur suggests that the economy of Nepal was flourishing. Thirteen inscriptions from Narendradeva's reign have survived and they give accounts of his rule. D.R. Regmi, giving reference to Chinese accounts, presents that Narendradeva sat on a throne bejewelled with a diamond, pearls and other jewels, wearing earrings of gold and with an amulet of Buddha's likeness dangling on his breast.²⁰ His

Huge population both in Nepal and India share the origin with Chinese population, whereas vast population of China holding Buddhist faith considers Nepal and India as places of worship. On the other hand, Mount Kailash and Mansarovar Lake are holly places for Hindus of Nepal and India. This inter-connectedness requires flourishing as milestones for fostering inter-cultural communication further. See Jiang Rui and Han Zhihong, 'Culture as the Bridge to Promote Friendly Relations among China, Nepal and India--Reflections in the Context of the 'Belt and Road'. Paper presented in the 'China-Nepal Think-Tank Conference 2017, organized by Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 5.

¹⁸ *Ibid* (n.12), p. 18.

¹⁹ *Ibid*, p. 20; the group of scholars was attacked by Arjuna (*Arlo-nashun* in the Chinese Text). Wang Shuan Tse and one of his colleagues managed to escape and returned to Nepal. King Nrendradeva was ruling Nepal then, who was assisted by the ruler of Tibet to gain his reign back from his uncles. Nerendradeva and Shrongtsan Gyampo, the ruler of Tibet, formed a combined military to attack the ruler of Magadh, the troop was able to rescue the other surviving emissaries. The friendship between Nepal and China was thus formally and firmly established.

²⁰ *Ibid* (n.16), p. 177.

friendship with the North was spectacular. His grandeur was one of the reasons China sought to have relations with Nepal.

- b. King Narendradeva stayed in Tibet for some time in a political asylum. As mentioned by Rishikesh Shaha,²¹ the historical annals found in mainland China as well as its autonomous region Tibet state that Shrong-tsen Gyampo, the ruler of Tibet, provided assistance to Narendradeva and his family to restore the throne which had been lost two decades ago. During his stay in Tibet, Narendradeva heard about the glowing description of wealth and splendour in the Imperial Court of China. It was how he became determined to establish a formal relation between China and Nepal. He sent a mission with all kinds of gifts and succeeded in having a dependable relation with China.²²

From this time onwards Nepal and China regularly sent emissaries to each other's country. Nepal was the first country for China to have a formal relation in South Asia. The practice of scholars visiting each other's country became thick after this relation. Most Chinese scholars arrived in Kathmandu from Kerung, and thus in the time that followed, the route became a gateway for China to Nepal and India and vice versa. It also served as a section of the ancient Silk Road to connect Lhasa, Kathmandu, Kashmir, Afghanistan, Iran and finally to Europe. Reportedly, Nepal learned the skill of making paper from China and became the first country to produce paper in South Asia.²³ Nepal emerged as a prosperous country with its handmade finest quality paper which was added to its traditional exports of musk, orpiment, blankets and other woollen goods to India. Nepal's higher volume of wool trade is even mentioned by Kautilya.²⁴ With stronger tie with the Imperial Court of China and flourishing trade with India, Nepal had been able to maintain dominant economic as well as political position in the region.

This is how Nepal formed a gateway to connect South Asia, including Afghanistan and Iran, to China and vice versa. The trade between two countries proved to be a boon for the thriving economy of Nepal, and it transformed Nepal into a culturally rich, educationally vibrant²⁵ and economically a prosperous nation. Kathmandu city emerged as an amazingly attractive place for the journey to learn Buddhism as well as Hinduism. With its transit connectedness with China

²¹ Ibid (n.18), p.19.

²² Ibid.

²³ About this time Nepal learned art of paper making from China and handmade finest quality paper constituted one of the merchandises to export to India besides musk oil, orpiment, blankets and other woollen goods to India and beyond; Rishikesh Shaha, *Ancient and Medieval Nepal*, Ratna Pustak Bhandar, Kathmandu, 1992, p. 21

²⁴ Ibid (n.8), p.18.

²⁵ Sanskrit was the medium of higher education and education was fairly widespread among the people. The astrology and astronomy were rich. Nepal had developed skill to draw up calendars based on the calculations of the various phases of moon. This was also a popular practice in China. See, Ibid, p. 21.

and India and resulting economic and political potentials, Nepal gained honour both from China and India, respectively.

The annals of the history of Sino-Nepal relations present some important facts with significant importance for the present context. They are: (a) the firmly established relation between China and Nepal was strategically significant for security and prosperity of Nepal; (b) Nepal formed a gateway to China for the South Asia and it brought fortune not only for Nepal but also for India as Nepal fashioned a safer and secured route for trade between Indian and China, and, since people traversed to Nepal through India, India became a hub of trade for merchants from the middle-east; (c) Nepal provided most convenient trade link between the South Asia and China; and (d) the enhanced trade between South Asia and China ensured greater prospect for peaceful and dependable relation among the people, which, then, contributed to the educational and spiritual link between South Asia and China, by which China could enhance its intellectual and cultural progress. Nepal's role as a bridge between South Asia and China was imminent and dependable in all parts of the history until South Asia was not fallen trap of colonialism. There have been historical assertions that Magadha established its relation with China with the help of Nepal.

In the later medieval period, the relation between Kathmandu and Lhasa increased further, though, in this period, there were sporadic wars between Nepal and Tibet,²⁶ which represented the Chinese empire in the Western Himalayan frontiers. During the medieval period, the trade between Nepal and China grew substantially. Kerung and Kuti were the most convenient and popularly used trade routes. From the later part of the 18th century, however, the trade declined significantly. One of the reasons was the unjust war initiated by the king of Nepal against Tibet with a view to gain additional income from the minting of golden and silver coins. The invasion of Nepal over Tibet invited the reprisal from the Emperor of China in 1792.²⁷ Though a treaty between the representative of the Chinese Emperor and Nepal ended the war, it originated a scar in the trust-based relation of the past. Nepal had to pay a heavy cost for this unwanted adventure.

²⁶ According to some historical annals, Kaji Bhim Malla attacked Tibet and forced Tibetan rulers to accept joint authority over Tibet by a treaty. Ram Shaha of Gorkha was another ambitious king. He also invaded Tibet and controlled the main trade route from Tibet to Nepal. Pratap Malla attacked Gotkha's Dambar Shaha and obtained his control over Kerung and Kuti from Gorkha. From the description of Kapuchhino priests, the goods of Nepal were in great demands in Tibet. Most importantly, Kathmandu was responsible to mint golden and silver coins for Tibet, and from this Nepal obtained substantial benefits. The trade of Nepal with Tibet was thus main source for rich economy of the Kathmandu Valley; See, Rishikesh Shaha, *Ancient and Medieval Nepal*, Ratna Pustak Bhandar, Kathmandu, 1992, pp.73-90.

²⁷ For description in detail in this regard, see, Yubaraj Sangroula, "Past and Present of Nepal India Relations: A Critical Examination of Problems, Challenges and Prospects" in Yubaraj Sangroula and Rohit Karki (eds.) *Geo-Strategic Challenges to Nepal's Foreign Policy and Way Forward*, Kathmandu School of Law, Kathmandu, 2015, p. 92.

The worsening of relations caused by the war in the relation to the two countries invited an emboldened adventure from the British colonial rule in India, which in 1814 manifested into a treacherous Anglo-Nepalese war, in which the Nepal lost significant parts of its territory to the British colonial ruler. The Chinese Emperor refused to assist Nepal in the Anglo-Nepal war.²⁸ Had Nepal not blemished the relation between two countries in the past, the support of China to Nepal in the war could not have been denied.²⁹ This very unfortunate historical event reminds us that 'failure to maintain a good relation with the northern neighbour brings not a good time to Nepal'. The emergence of colonial power in India was also an important cause of weakening communication between Nepal and China. Nepal had to exist in a constant threat of colonial invasion, and, in this wake of the crisis, Nepal could not have paid the required attention to foster its ties with China and to develop trade, education and other linkages.³⁰ In other words, the smooth and dependable relation with the northern neighbour not only brings good fortune to Nepal but it is also a boon for the national security of Nepal'.

The relation between China and Nepal was equally depleted by the weakening position of the Qing dynasty, which encouraged rulers of Tibet to assert independence and block the relation between Nepal and China. Most emissaries going to Beijing from Nepal were then disturbed by the Tibetan rulers. The gift sent to Beijing was looted and emissaries were killed. During the 19th century, the relation between Nepal and China remained almost in darkness, the anarchy and political transition gripping China was the main reason.³¹ However, this dormant relation was revived in the 1950s but the economic ties still remained low profile. The OBOR initiative is thus an effort to revive the rich past between two countries along with India.

History of Modern Relations between Nepal and China

In 2015, Nepal and China celebrated the 6th anniversary of the formal establishment of the diplomatic relations between them. The Sino-Nepal relation after the establishment of the diplomatic relation is guided by the Five Principles of Peaceful Co-existence. Without any outstanding unsettled issue, Nepal and China have nurtured a 'very cordial relation' between them. The assistance of China to rescue Nepal from devastating 2015 earthquake was substantial and praiseworthy. The People Republic of China provided the largest rescue and reconstruction support to Nepal. The formal interaction between two countries

²⁸ Whelpton John, *A History of Nepal*, Cambridge University Press, London, 2007, p.39.

²⁹ For detailed description, see, Shaha (n 9) pp. 7-145.

³⁰ See Jiang Rui and Han Zhihong, 'Culture as the Bridge to Promote Friendly Relations among China, Nepal and India--Reflections in the Context of the 'Belt and Road'. Conference Paper, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, 17-18, January, 2017, p. 6.

³¹ For detailed accounts, see, Jagadish Sharma, *Nepal: Struggle for Existence*, CommInc ICT Private Limited, Kathmandu, 2006.

began as early as 1956 when the 'Agreement on Trade and Intercourse between the Tibet Region of China and Nepal (Economic Aid) and Agreement on Friendly Relation between People's Republic of China and Kingdom of Nepal were signed to strengthen the cooperation between these two countries in 1956. These agreements were concluded when the Chinese Premier Zhou Enlai paid a visit to Nepal.

Another agreement was signed in 1960 when Nepalese Prime-Minister Bishweshwar Prasad Koirala visited China. By this agreement, China agreed to provide 100 million Indian rupees over three years as a non-reimbursable assistance. This heralded an era of economic cooperation between two countries. Subsequently, China began to contribute to infrastructure development of Nepal.

China and Nepal subsequently established a Joint Boundary Committee with an objective to solve, in particular, the problems regarding delineation of their borders. This included the issues of the survey, demarcation, and setting up boundaries marks along with the Drafting of Boundary Treaty between two countries. The boundaries between two countries were solved without any major challenges. The only pressing issue between the two countries was the 'delineation of the boundary at Mt. Everest'. In 1961, Nepal's King Mahendra visited China and signed the Boundary Treaty, making the Mt. Everest shared by the both countries as a symbol of friendship between two countries. In 1963, two countries signed an agreement by which China pledged to provide economic and technical assistance to Nepal's development efforts. In 1973, King Birendra visited China; and in this visit, the talk was mostly focused on building Qinghai-Lhasa Railway, which would ultimately connect China with Nepal.

On February 1978, Vice-Premier, Deng Xiaoping paid a visit to Nepal. His visit further enhanced the consistent relation between two countries. In 1984, the Chinese President Li Xianian visited Nepal. This visit envisaged to further enhance the relation between two countries and expand the economic cooperation for Nepal's development.

Unfortunately, during the 1990s and 2000s, Nepal underwent through an acute political turmoil and transition. The loss of two decades in the conflict was a serious hindrance to the economic development of Nepal whereas China in this period gained unprecedented economic growth and was able to obtain the position of the second largest economy in the world. Nepal could not capitalise on its neighbour's achievements. The moment for Nepal to learn from China has now arrived with the Chinese President Xi Jinping's initiative for belt and road under Silk Road Development project. Before embarking into this, it would be worthwhile to reflect on attributes of economic development achieved by China in a considerably short period of time.

The Emergence of China as a World Economic Power and Prospect of Economic Development to Nepal being Assisted by the Policy of Increased Economic Cooperation with Neighboring Countries and OBOR³²

The last forty years in China constitute an amazing timeframe in its economic development. While some simply disbelieve it, others fail to understand it. Nepal as one of China's closest neighbours must believe and understand that Chinese economic development has a prospect of reshaping the existing international economic order, which is largely unjust, exploitative and obstructive towards development in smaller countries. The Chinese economic development model, regardless of its ulterior objectives, is showing the world a new hope of cooperation through benefiting all towards greater achievements for building a more rational or equitable world. Before discussing OBOR's prospect for heralding a new model of international economic order, it would be worthy to reflect on some dynamics of the economic development that were able to put China on the world stage and enabled it to capture the position of the second-largest economy in the world with unprecedented speed, inviting the possibility of China leading the world economy in the days to come.

The Massive GDP Growth Pattern: The Chinese economic growth pattern is marked by some features in the past, which are unique in character. Firstly, the economic growth pattern is characterised by the principle of pragmatism, which denies understanding socialism mechanically or dogmatically. The political principle of that the 'the party must assume the role of leadership' is considered to be quintessential for fostering a pragmatic socialism, which is defined today as 'socialism with Chinese characteristic'.³³ The happiness of the people, as masters of the nation, constitutes the central goal of the pragmatic economic development and as such the principle forms the 'political foundation of socialism'. The enhancement of the mass production strategy by fostering increased productivity of the people is a driving force behind the economic growth. This principle brings to an end of the practice of 'survival of many on the labour or income of few.' Obviously, the mobilisation of the mass for production resulted in an

³² The OBOR is an implementing vehicle of Silk Road and Maritime Silk road concepts. On March 28, 2015, the Chinese National Development and Reform Commission, Foreign Ministry and the Ministry of Commerce collectively released an official document clarifying the concept of OBOR. The document entitled "Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st-Century Maritime Silk Road" provided the following coverage of the geographical areas: (a) The Silk Road Economic Belt mainly goes from China through Central Asia, (b) Russia to Europe (Baltic Sea), (c) from China through Central Asia, West Asia to the Persian Gulf and the Mediterranean, (d) from China to South East Asia, South Asia and the India Ocean, (e) the 21st-Century Maritime Silk Road mainly starts from China's coastal ports through the South China Sea to the South Pacific; See for more detail, Wang Yiwei, *The Belt and Road Initiative: What will China Offer the World in Its Rise*, New World Press, 2016, p.83.

³³ See, Li Junru, *What Do You Know About the Communist Party of China?*, Foreign Language Press, 2011, pp.17-20.

intensification of the production, thus sharply contributing to the rise of robust national gross production. The modernization of agriculture through mechanisation transformed the rural farmers' situation rapidly, thus ending the situation of subsistence economy. The improved scientific production system in agriculture in the rural part brought a desired connection with the urban market system. This momentum in development was reportedly achieved, in turn, by the strategy of (i) massive investment in the mega- infrastructure projects that created massive employment opportunities for the unemployed mass, (ii) permission to private investment under law which generated a situation of collaboration between the State-owned enterprises and private enterprises, thus mobilizing the private property for the national development endeavors, (iii) capacity building of masses of people through improvement in the education system, and (iv) use of developed or refined technology for faster completion of the project activities with high standard of quality.³⁴

The Scientific Development Pattern:³⁵ During the massive growth period, the GDP growth rate exceeded ten percent annually. From the period of opening up to the year of 2010, the Chinese economy grew to become mammoth in size and to take the place of Japan as the second biggest economy.³⁶ However, in the later part, especially after 2010, the growth theory was replaced by the theory of scientific development. The mammoth economic growth came with environmental as well as other problems. Moreover, probably, the leadership of the Communist Party of China realised that the development is not meant only to enlarge the size of economic growth. Besides it, the socio-cultural well-being of people and the harmony or cohesion with nature are considered the equally important aspect of the development. The principle that the development and protection of nature must go together was firmly realised. As a matter of fact, the post-2010 development strategies stopped emphasising the material gain alone. The cultural or psychological aspect of development is now considered equally important. The happiness of the people along with their economic well-being is emphasised equally. The better social security system is considered pivotal. The elimination of corruption is gaining serious attention too. All these strategies suggest that the economic development efforts and endeavours go together with other development efforts such as protection of the environment, harmony among the people and strengthening the healthy modern culture of life.

³⁴ . Wang Chen, Minister of State Council Information Office of the People's Republic of China. Preface to the Book by Wang Guoliang et al, (eds.) *Scientific Development in China: Volume Summary, China in the last Ten Years*, People's Publishing House, 2012.

³⁵ . The concept of economic growth is supplanted by a concept of scientific development, which targets the happiness of people, by realizing the needs of people. See for detail elaboration, Li Junru, *What Do You Know About the Communist Party of China?* Foreign Language Press, 2011.

³⁶ . Wang Guoliang et al, (eds.) *Scientific Development in China: Volume Summary, China in the last Ten Years*, People's Publishing House, 2012.

International Cooperation: International cooperation is considered as another fundamental or key component of the development. As it is evident from policies adopted by the Government of China, the previous strategy of economic development is undergoing rapid changes. The vital strategy adopted by the Government of China is to 'connect China's foreign policy with economic cooperation with other countries, particularly with the neighbouring countries'.³⁷ The change became more categorical and plain in the subsequent time, especially when President Xi Jinping stepped up into the leadership of the party and the government. The focus of the Chinese government in cooperation with South Asia is particularly important in this context.

In 2012, President Xi Jinping brought an ambitious restructuring plan for the world economic order. This plan includes fundamentally three important components. They are (a) the revival of the Silk-Road trade system,³⁸ which in the past connected Asia with Europe. The government of China probably realised that the significance of Silk-Road is furthermore enhanced in the present world both from the prospect of economic cooperation and connectivity. (b) The concept of Silk-Road was extended to the maritime trade system.³⁹ The Maritime Silk-Road system would connect the Indian⁴⁰ Ocean, South Pacific sea and Arab World and beyond up to Africa. (c) The equally important concept was the connectivity in the world by the road and economic activities in collaboration. The concept of One Belt One Road thus appeared as a pragmatic instrument of collaboration among nations to ensure everyone's economic development. All these concepts and projects are driven by strategies for ensuring the international peace and the integration of the world through economic cooperation as a foundation of international relations in the coming era. The concepts or projects underline four major goals or strategies: (a) for global peace and prosperity, there should be a development paradigm in which a platform for cooperation based on sovereign equality of all, irrespective of the territorial or economic size, is established, thus contributing to the rescue of the larger part of the world which still grapples with massive poverty; (b) every State, irrespective of size of territory and wealth, with its specialty, can contribute to the development of its region so that mutual collaboration to integrate efforts and wealth is vital for the development of all; (c) the integration of the various parts of the globe is vital for building a lasting trust among the nations and peace in the world.

The said underlying goals or strategies of OBOR are expected to achieve the following outcomes:⁴¹ (a) to build connectivity of nations in the region and

³⁷ Xi Jinping, *The Governance of China*, Foreign Language Press, 2014, pp.315-319.

³⁸ Ibid (n.37).

³⁹ Ibid (n.37).

⁴⁰ Wang Yiwei, *The Belt and Road Initiative: What will China Offer the World in Its Rise*, New World Press, 2016, p.83.

⁴¹ "The Belt and Road Initiative will transcend the Marshal Plan. As early as January 5, 2009, *The New York Times* tagged China's going 'global strategy as the Marshal Plan for Beijing.

beyond, thus achieving a tangible result of integrating efforts and resources for the mutual development of all; (b) to build a mutual interdependence among each other, and, for that, to develop a deeply entrenched trust, thus recognizing each other's system in accordance with the spirit of international law and relations; (c) to create a situation in which every partner nation would avoid conflict, which is a precondition for the dependable international peace. Most importantly, such kind of interdependence and collaboration can bring nations into a trusted connectivity, thus contributing to avoid hegemonic attitudes in any partner nation.

OBOR and China, Nepal and India Corridor

The discussion above reflects on a theoretical basis for the importance of the OBOR project. It has been a well observed and experienced fact that Nepal, China and India have a long history of communication. As rightly noted by a member of the Chinese think tank, Prof. Jiang Rui, these nations have been engaged in close economic and cultural communication since as early as the first century.⁴² The People's Republic of China now advocates the concept of 'Belt and Road' construction as a new dimension of cooperation for economic development and connectivity. The trans-Himalayan corridor consists of belt and road construction comprising Nepal, China and India as a means of fostering cooperation among three countries for desired economic development and enhancing cultural proximity which these three countries have maintained at least for 2000 years.⁴³ The corridor is expected to bring about desired achievements for all countries as members of the corridor.

China:

For China, the Trans-Himalayan corridor will open a gateway⁴⁴ for reaching out to South Asia, Nepal, India, Bangladesh and Bhutan in particular. The construction

This rhetoric has become more popular after the Belt and Road Initiative was proposed. As a matter of fact, the initiative, while not being a Chinese Marshal Plan, has gone beyond the level of Marshal Plan."; See, Wang Yiwei, *The Belt and Road Initiative: What will China Offer the World in Its Rise*, New World Press, 2016, p.39.

⁴² See 'Culture as the Bridge to Promote Friendly Relations among China, Nepal and India-- Reflections in the Context of the 'Belt and Road'. Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 1.

⁴³ Ibid.

⁴⁴ China borders 5 of the 8th South Asian countries. The border covers almost 5000 km. It is therefore generally accepted across China that the region is in fact a gateway for China's "Western-oriented opening-up" and the west-ward corridor development. China and India borders suffers from political issues, and thus opening-up of the Indo-China border needs to be awaited for. China-Afghanistan and China-Pakistan borders are difficult ones. China and Bhutan do not have diplomatic tie. Hence, Nepal is a bridge between China and South Asia. See for detail, Li Tao, "From Yam to Bridge: China-Nepal Relations from OBOR

of 'belt and road' under this project will directly connect Western China with Nepal, and eventually with the northern and north-east territories of India. The 'Belt and Road' will thus open up vast new opportunities for investment as well as trade cooperation among three countries. The People's Republic of China will benefit from this corridor significantly both economically and culturally because the 'belt and road' will connect the western part of China directly with the vast territory and population of South Asia. The 'belt and road' has the potential to ignite unlimited activities concerning economic endeavours, including trade, across three countries.

The corridor has a significant cultural dimension also. The western China is a hub of Buddhism so that the connectivity among three countries by road will generate massive movement of the population from western China to South Asia for spiritual purposes and pilgrimage, thus it will be instrumental in connecting and boosting up of the cultural ties among people of three countries. A huge population in China holding Buddhist faith can have a direct and convenient link with Lumbini of Nepal and other Buddhist shrines in India. This link will definitely contribute towards increased trust and communication of China with Nepal and India. This corridor thus has a wider historical significance. In the past, with the long history of communication, the people of three countries extensively traversed across the borders of each other's countries. As rightly pointed out by a Chinese intellectual, the 'Teas-Horse Road,' 'Silk Road,' 'Tubo-Nibo Road' and so on provided important links among Nepal, China and India, and beyond, in the past.⁴⁵ These links contributed in diffusing culture, art, religion and science. These links in the past were crucial to build these three countries emotionally and psychologically connected with other. The proposed corridor is in no way a completely new idea for these three countries; indeed, it is an attempt to revive the past which contributed to creating a cradle of cultural assimilation of people of these three countries.⁴⁶

Perspective", Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 1.

⁴⁵ See 'Culture as the Bridge to Promote Friendly Relations among China, Nepal and India--Reflections in the Context of the 'Belt and Road'. Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 2.

⁴⁶ The intensity of cultural communication among Nepal, China and India in the past was wider and extensive. According an ancient legend, Manjushree visited Nepal from Wutai mountain of China. He cut off the gorge at Chovar and let the water of Kathmandu go out, and thus making it's a good for settlement. Chinese monks or scholars visited Nepal. Fa Xian, Xuan Zang and Jiya visited Nepal while Nepalese monk Buddhahadra (known in China as Jue Xian) visited Nepal. Nepalese great artist Araniko (known as Anigou in China) lived in China more than 40 years and led the construction of many Buddhist temples in China. Buddhism has been one of the linking threads for people Nepal, China and India. The modern days' frequency of communication is greater. See Jiang Rui and Han Zhihong, 'Culture as the Bridge to Promote Friendly Relations among China, Nepal and India--Reflections in the

As indicated above, the corridor has undoubtedly a tremendous economic significance. But the importance is not limited only to the economic activities. The economic activities do attach culture, art, religion, science and technological attributes to expand in the area of the corridor. As a matter of fact, the corridor will contribute towards the emergence of a new cultural, religious, scientific and technological cooperation among the people three countries, thus diffusing a new emotional and psychological integration of people. The corridor is thus the potential of 'connecting the Western China with Nepal and India' culturally, religiously and scientifically.

The prospect of educational cooperation among these three countries, along with adventure and pilgrimage tourism, is vast. Obviously, China can benefit from its enhanced educational development and adventure as well as pilgrimage capacity. South Asia with vast and diverse culture can be a destination for millions of Chinese people for outreach for the purpose of research activities in a multitude of areas. The corridor is thus highly potential of bringing the academics, scientists, and researchers to collaborate for the larger benefit of entire humanity. The corridor may revive the historical civilisation based on Orientalism.

The corridor will also contribute in connecting China with the Bay of Bengal, which in turn will contribute to expanding the trade relations of China with other countries in South Asia and beyond. The corridor will seemingly bring Bangladesh, Myanmar, and the entire South East Asia in linkage with Western China.

India:

Like China, India will be directly connected with Western China for trade and other economic enterprises and will gain tremendously from mammoth markets in Western China.⁴⁷ Over the past some years, India's economy has gained tremendous momentum in the increase. As such, India has been able to draw a vast attention to it in the field of international politics as well as economic development cooperation. India is one of the members of BRICS, a new initiative launched under the leadership of China to fashion a new international economic order. Being a member of the BRICS, India assumes responsibility to enhance 'connectivity and economic cooperation' among Asian nations, the neighbours in particular. As a matter of fact, Nepal, China and India corridor provide greater benefit to India as it can stimulate economic development endeavours in its

Context of the 'Belt and Road'. Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 5.

⁴⁷ In May, 2015, the Indian Prime Minister Narendra Modi, during his visit of China, made a positive response to the economic corridor initiated by China and suggested to form a joint research team to discuss this plan. The development has been positively moving ahead, as Dr. D.J. Padian, an Indian expert, has now been appointed as the Vice president of the AIIB. See, www.aiib.org/html/2016/NEWS_0205/19.html.

northern and north-east provinces in collaboration with the Chinese entrepreneurs and investors.⁴⁸ Most importantly, India can generate its wider market in Western China by the corridor.

Despite its increased economic development rate over the past some years, India still does not rank high in its economic aggregate, economic development level and infrastructure development;⁴⁹ the infrastructure development situation is still severely low in rank. Another serious challenge India is facing is its 'massive disparity' in the distribution of the fruits of economic development; the gap between rich and poor is incredibly bigger. Poverty declined faster in India in the 2000s compared to that of 1990s. But, still India has more than 300 million poor people and some of the non-poor also fall into the vulnerable category. Creation of productive employment is crucial for reduction in poverty. Inequality in consumption seems to have increased particularly in urban areas. There are significant inequalities by sector, region, gender and social groups.⁵⁰ As pointed out by S. Mahendra, India has suffered five major failures in development.⁵¹ They are (a) slow infrastructure development, (b) failure in increasing labor-intensive manufacturing, (c) not taking advantage of the demographic dividend, (d) slow social sector development, and (e) failure in governance. In this view, the corridor is expected to bring about the following benefits to India:⁵²

- Indian infrastructure development will be enhanced. India has the longest railway history but it is working in a sluggish way. The belt and road project will directly enhance the railway connectivity and modernization of Indian railway.⁵³
- The road system needs to be significantly improved. India can achieve benefit from AIIB in order to construct its impoverished road system.
- The corridor will bring more investment to modernise and make the industrial sector efficiently productive.⁵⁴

⁴⁸ See, Di Fangyao, "Strategies and Suggestions on the Construction of China-Nepal-India Economic Corridor", Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 3.

⁴⁹ Ibid (n.48), p. 2.

⁵⁰ See, S. Mahendra Dev, "Economic Reform, Poverty and Inequality", Indira Gandhi Institute of Development Research, Mumbai, March 2016; available at www.igdr.ac.in/pdf/publication/wp-2016-009.pdf, last accessed on 7 March 2017; See also, Partbapartim Pal and Jayati Ghosh, "Inequality in India: A Survey of Recent Trends", DESA Working Paper No. 45/DWP/45/, July 2007; available at www.nabamukti.org/Arunachal%20Reports/Inequality%20India%202007.pdf, last accessed on 7 March 2017.

⁵¹ Ibid.

⁵² Ibid (n.50), p. 2.

⁵³ Ibid (n.48), p. 3.

⁵⁴ Ibid

- India, by being connected with Western China by road and railway, can promote its trade with Central Asia through China's modern, faster and more convenient transportation system.
- Can facilitate economic endeavours in North and north-east provinces, which suffer from greater poverty and inequality.

Accessibility of over 300 million people from North and Northeast provinces to economic investment potential and trade with China and Central Asia is a boon for India. China's Tibet is an important hub for connecting China, Nepal and India. Tibet has relatively developed open ports and trade route facilities. And, most importantly China's Tibet has greater will to connect with Nepal and India. The cultural affinity of Nepal and India with China's Tibet is an equally important advantage.

Nepal:

Nepal is the equally important beneficiary of the corridor. Nepal has had gone through a painful political transition over the last three decades. The absence of economic development coupled with a protracted and intensive political transition has pushed vast majority of the population to a 'trap of frustration and fear of unwanted future'. The absence of economic endeavours accompanied by a lingering political activism has caused to result in the following unwanted consequences, enough to create vulnerability in national integration, security and the long-standing social cohesion of people.

- Brain drain has been a massive and serious problem. Thousands of people educated by using the tax paid by poor people have left the country as cheap labourers to western developed countries and the Middle East. The nation's investment in the production of educated mass has gone in astray. Nepal is rapidly emerging as a factory to 'produce a cheap human resource to the developed countries and the Middle East'.
- The absence of employment and earning is tending to convert into a 'population of disgruntled gossipers'. Such mass has no value to pursue and hope to nurture. They tend to believe in nothing and discard everything. The social breakdown is a serious challenge in such a situation.
- When a society is stricken by loopholes in politics and faces the absence of productivity and lack of civilised way of life, it comes easily within the influence of others. The Nepalese society is today marred by racial division among people, the segregation of people by territory and regionalism and the confrontation of the religious faiths.
- Political corruption is crossing the highest limit. The posts and positions are auctioned. The politicisation of bureaucracy, education system, judiciary and all other walks of life are posing a serious threat to the peace and stability in

future. The financial statistics show that the 10 percent elites of the population consume 52 percent of GDP, and the lowest 20 percent poor population has access to only 5 percent of GDP. This shows in itself that how big systematic discrimination is legitimised by the political and governance system of the nation. The general people of Nepal pay tax for survival, whereas the rich population pays tax only for luxury. The sick people, for instance, have to pay VAT for the service they acquire, the political, leaders, however, obtain millions of rupees in assistance for treatment, which is not accounted for. The poor and rich people pay the same tariff for electricity, water, road, telecommunication and all other services. The poor in the guise of royalty and fees are compelled to pay tax for the luxury of the rich and politicians.

- The education system has gone almost corrupted; it has become an 'unregulated and unethical trade'. The education system is just fulfilling an obligation of producing unemployed mass.
- Interference of international organisations and some powerful states in internal affairs is wider and deeper. Nepal's State institutions have been maligned and their essence is largely destroyed. Such organisations and states are directly involved in micro-management of Nepal's politics, administration and economic endeavours. Selling license of liquor production industry and gambling at the hotel, permitting a system of cartels, promoting smuggling in gold and other contrabands, exporting human resources for exploitation and so are 'enterprises of political leaders and corrupt bureaucrats'.
- Over the last thirty years, the political leaders destroyed the following enterprises in Nepal:
 1. Baaasbari Shoe Factory, which was making a profit and was established by Government of China as a Gift to Nepalese people.
 2. Bhrikuti Paper Factory; it was too a gift of China to Nepal.
 3. Butwal Thread Factory, Himal Cement Factory, Birgunj Sugar Mills, Agricultural Equipment Factory, Trolley Bus, Nepal National Construction Company, Nepal Engineering Consultancy Service Center, Nepal National Computer Center, Harisiddhi Brick Factory, Hetauda Clothing Factory, Rosin Turpentine, Nepal Ropeway, Janakpur Tobacco Factory, GodavariMarble Industry, Godawari Iron, Biratnagar Jute Mill, Herbal Processing Plant, National Trading Limited, and so many other. Why were these enterprises sabotaged? Who was involved in sabotaging the economy, manufacturing and service sector of Nepal?

In this perspective, the only option left for Nepal is to accelerate the process of economic development. Only the economic development can protect and preserve the national integrity and social cohesion of Nepal. The 'intruders' have very cleverly noticed and acknowledged that 'the only dependable way to push

Nepal towards the position of failed State is to destroy its development prospect'. Most of the above-mentioned enterprises thus became victims of this 'strategic goal' of intruders. It implies that 'Nepal has no option to embark on economic development endeavours'. The belt and road project is thus a boon for Nepal. Nepal's active participation in the China-Nepal-India corridor is a 'rescuer' of Nepal from this unbecoming situation, and, hence, anyone who is indulged in frustrating this mission should be condemned by the nation in entirety. Thus, building a national consensus for implementing the 'China, Nepal and India Economic Corridor' is vital. The think tank of Nepal must strive for bringing political parties of Nepal to a table to 'build a categorical agreement to implement it without any delay'.

Converging Nepal from a yam between China and India into a bridge between them is the most strategic importance of belt and road initiative. Some experts from China have pointed out five major advantages of Nepal-China border to 'create a bridge between China and the South Asia'. The first advantage relates to 'geographical convenience'. The Nepal-China border is comparatively easier for accessibility and convenient for movement. Nepal-China border offers 184 of the 312 passage linkages as possible routes for connecting China and South Asia.⁵⁵ Li Tao, Professor of the Institute of South Asian Studies, Sichuan University, says, "Nepal is a node linking "Silk Route Economic Belt" and "21st Century Maritime Silk Road. Nepal interlinks BCIM and CPEC, the two major economic corridors."⁵⁶ The importance of Nepal-China border is self-evident. Secondly, Nepal is a hub for China-South Asia cultural and religious exchanges. The potentiality of Nepal being a bridge for communication between Chinese and South Asian people is immense. Thirdly, Nepal is rich in natural resources and thus provides a big potential for economic enterprises as well as trade activities. Hydro-power potentiality is huge in Nepal and it can attract both China and India for investment. Fourthly, Nepal has consistently practised the policy of 'neutrality' and non-engagement in power block. The foreign policy adopted by Nepal is conducive for economic ties between China and Nepal and India and Nepal, among all of them. Lastly, China and India relation are rapidly improving. India is not, at least, against the concept of China-Nepal-India corridor. The rapid economic development in Asia is providing Nepal with a better opportunity to come out of 'psyche of yam'. The prospect of it being converted into a bridge is rapidly evolving.

OBOR has a greater prospect of benefit for Nepal. The following justifications will plainly establish the assertion:

⁵⁵ Li Tao, "From Yam to Bridge: China-Nepal Relations from OBOR Perspective", Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 2.

⁵⁶ Ibid.

Nepal, with its location between China and India, constitutes a natural bridge between two countries, not only geographically but also culturally. Having China expressed its desire to connect its territory with South Asia in terms of economic cooperation and mutual trade, Nepal will be the largest beneficiary of the project. Da Fangyao, a professor at Institute of South Asian Studies in Xizang Minzu University, rightly says: "It is the most important development opportunity Nepal has received in the 21st century". Indeed, he is right.

The corridor brings China and India to work together in their development endeavours, and, thus, Nepal can benefit from the both. Nepal has some peculiar advantages in this project. They are as follows:

- Nepal can be the transit country for the flow of goods in and out of these two countries in their markets. Nepal can this way develop a huge transportation industry to serve the both countries. The volume of the financial transaction to be involved in this industry is beyond imagination at this point. It is, therefore, a duty of the transportation entrepreneurs to press and emphasise the need of Nepal being embarked on the project as soon as possible.
- Nepal can be a hub of industrial enterprises to be set up by a joint venture between China and India. Nepal can take a great advantage from this potentiality. Nepal can achieve improvement in economic structure and international competitiveness in collaboration with two countries. One of the reasons for Nepal to emerge as an industrial hub is the 'youth labour population', cheaper and readily available. Nepal is a country with a larger stake of the youth population in South Asia. It can be thus assumed that number of industrial enterprises from India and China might move out to Nepal.
- Nepal's access to transit through China will be enhanced.⁵⁷ Nepal, using the convenient transportation system in China's Tibet, can explore a trade with the central Asia and beyond.
- With the best use of the corridor, Nepal can achieve the following categorical results in the development of Nepal:
 1. Nepal can develop a stronger freight clearance industry in Nepal, thus generating a huge employment opportunity for people. The freight clearance system requires higher level digital and internet facility. Nepal must develop a high-speed internet system to operate the customs clearance system, and this, in turn, will induce 'information technology' service sector a major enterprise in Nepal.
 2. Nepal can develop a viable international banking system to facilitate exchanges among countries involved in trade through this corridor.

⁵⁷ Ibid (n.49), p. 2.

The countries to be involved in the trade system will comprise of China, India, the South Asian countries and central Asian countries. Nepal as a hub of the international banking system will provide highly-paid employment opportunity to Nepalese citizens. The developed financial and management service sectors will end the intensive brain-drain problem country is facing at present.

3. Nepal can develop stronger Insurance System providing services to the enterprises within the country as well as outside. This will further originate a tremendous scope of employment in Nepal.
4. The entire service sector would be a boon in Nepal. Computer software, hospital services, educational institutions and other services may generate furthermore employment opportunities to Nepal.
5. Nepal, thus, can be an international centre, at least for China and South Asia.
6. China, Nepal and India corridor will connect Nepal's air, rail and motor vehicle transportation systems to the Chinese and India networks. The connectivity will provide a better option for the emergence of tourism. With increased connectivity in the transportation sectors, Nepal has the potentiality of emerging as a hub of 'religious or spiritual tourism'. The economic corridor, for this purpose, requires connection of Lumbini and Lhasa, Lhasa and Kathmandu, Lumbini and Ali and by air. Kathmandu, Pokhara and Lumbini airports can serve as the location of origin for millions of Hindu tourists to visit Kailash and Mansarovar in China's Tibet. Lhasa and Ali airports can serve as the location of origin for millions of Buddhist tourists who intend to visit Lumbini, the birthplace of Buddha. The revenues to be generated by these sectors of tourism are fairly huge.
7. Joint research and conducting programs for protection of Himalaya and its environment is an equally important sector of development to be materialised by China, Nepal and India economic corridor.
8. China and Pakistan economic corridor can be utilised by Nepal for importing fossil fuel.

The indirect benefit is associated with the political stability and harmony among the people in the country. This economic development opportunity, for it, will create adequate employment opportunities for citizens; will address the problems of migrant workers from Nepal, including the stigmatised practice of Nepalese joining the military service of other countries. The corridor has thus not only economic benefits; it has tremendous social and cultural advantages.

Nepal can emerge as a centre of Hinduism and Buddhism. OBOR in Nepal at present can be imagined, analogically, as a connection of Ali city (Kailash and Manasaraobar) by airline from Kathmandu which can provide millions of

Nepalese and Indian Hindus for pilgrimage. Kailash and Mansaraboard are sacred pilgrimage places for Hindus. Tourism will be boomed both in Tibet in Nepal. Ali can also be connected to Lumbini, thus providing access to millions of Buddhist for pilgrimage in Nepal. Himalayan Airlines, a joint venture between Nepal and China, has already connected Colombo, which brings Sri-Lankan devotees to Lumbini and Gaya of India. These two routes will enhance the prospect of tourism in India, Nepal and China collectively.

Nepal's integration in broader economic activities of South Asia will be an advantage from this project. Through such interactions, Nepal will be able to enrich its international competitiveness in production and sale of goods.⁵⁸ Economically viable Nepal will also have better say in regional issues. With regard to China, this project will evolve a better and dependable relationship between Nepal and China, and the same will be with India.

Current International Laws Providing Basis for the Belt and Road Initiative

United Nations' Charter is key international law facilitating and fostering bilateral and multilateral cooperation among nations. Article 1(2) specifies that to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace is a key purpose of the United Nations. This sub-article, indeed, provides a foundation for the framework of the post-world war international relations. Though not expressly put forth by the Charter, it can surely be inferred from the statements included in the preamble of the Charter that 'the bilateral and multilateral economic development cooperation is one of the measures to strengthen universal peace.' The preamble of the Charter implies that the prosperity of all humankind is a key measure for avoiding the scourge of war among nations. The preamble has unequivocally stated that one of the purposes of having United Nations established is 'to promote social progress and a better standard of the life in larger freedom and to unite the strength of Nations to maintain international peace and security.' The belt and road initiative of launched by the Government of the People's Republic of China explicitly promotes the 'intention' set forth in the Preamble of the UN Charter.

Article 2(1) of the Charter enshrines into the principle of sovereign equality of members of the United Nations. The exponent of belt and road initiative, the Chinese President Xi Jinping, while addressing a gathering at the Nazarbayev University of Kazakhstan, said, "To forge closer economic ties, deepen cooperation and expand development in the Eurasian region, we must take an innovative approach and jointly build 'Silk-Road Economic Belt'. To turn this into

⁵⁸ See, Di Fangyao, "Strategies and Suggestions on the Construction of China-Nepal-India Economic Corridor", Conference Paper presented, China-Nepal Think-Tank Conference 2017, Xinhua News Agency, Kathmandu, Nepal. 17-18, January, 2017, p. 2.

a reality we should start with work in individual areas first and link them to cover the whole region".⁵⁹The proposal fosters the idea of cooperation based on recognition of 'the principle of sovereign equality'. The following specific ideas avoid the 'concept of globalisation based on pre-1945 colonialism and the post-1945 unjust scheme of economic development' both of which placed less-powerful and developing countries into the yoke of economic exploitation and political dominance of the western developed countries. The belt and road initiative is largely a strategy to promote south and south collaboration for the economic development and international peace and prosperity.

1. On October 2013, Chinese President Xi noted that since ancient time, Southeast Asia had been an important hub of the Maritime Silk Road. China was ready to work with ASEAN with enhanced maritime cooperation, make effective use of China-ASEAN Maritime Cooperation Fund established by China, develop a partnership for marine cooperation, and jointly build the "21st-Century Maritime Silk Road." This idea is obviously an important initiative for peaceful use of the sea, and, since the sea is dedicated for maritime trade by the idea, the question of using these for other purpose is unthinkable.⁶⁰
2. The Silk Road Economic Belt and 21st Maritime Silk Road are initiatives to ensure trans-regional cooperation model of connecting Asia, Africa, and Europe in policies, trade, facilities, funds and people in the 21st century. Obviously, the belt and road initiative intends to promote an idea of globalisation, which is equally benefiting to all and rejects the idea of superiority of some nations over others. The globalisation in this model thus gives expression in reality to the 'sovereign equality' of all nations.⁶¹
3. The initiatives of belts and roads constructions are carried out jointly by partners; it is not an idea of China putting money for its sole benefit. As specified by the "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Maritime Silk Road, the joint construction of the belt and road is aimed at promoting the orderly and free flow of economic factors, efficient allocation of resources and in-depth integration. This model of cooperation is to bring about economic and developmental benefits to all nations that are involved in carrying out the cooperation. This idea promotes the strength of nations collectively and individually, thus providing a rich ground for the capacity of each nation to enjoy its right of sovereign equality under the international law.⁶²
4. The concept of economic corridor such as China-Pakistan Economic Corridor, Bangladesh, Burma, India and China Economic Corridor, China,

⁵⁹ Ibid (n.40), p.22.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid., p.23.

Mongolia and Russia Economic Corridor, China, Nepal and India Economic Corridor (proposed), New Eurasia Land Bridge, and so on are instrumentalities to make the Silk Road Belt a reality, and thus transform the globalization into a win-win concept. The concept is, in fact, a reaffirmation of the commitment and action to realise the goals stated in the Preamble of the Charter of the United Nations.⁶³

The few ideas discussed above on belt and road concept do reaffirm the commitment towards building a just and rational world as it was envisaged by the international law based on UN Charter and several others international law instruments described hereinafter. The modern international law obliges developed nations to assist in process of addressing poverty and injustice still phenomenally taking lives of people. However, the failures of the Western developed countries to save lives people in the developing and underdeveloped countries are grotesque. The poverty and deprivation expose common people to an utterly acute state of insecurity of life, the threat to the right to life is the most glaring one—every year over 18 million people die across the world prematurely due to poverty-related causes, which is one-third of all human deaths. Every day, fifty thousand people die due to poverty, of which thirty-four thousand are children below five.⁶⁴ The situation has witnessed no change at all. Since the end of cold war, ordinary deaths from starvation and preventable diseases amount to approximately 250 million, most of them children.⁶⁵ The global poverty refuses to decline, and global inequality continues to increase more than doubling since 1960.⁶⁶ Seemingly, the state of poverty and deprivation represents a state of the 'gross violation of human rights'. The Western developed countries have abjectly failed to bring about changes in such a 'grotesque situation' of human security. By contrast, some intellectuals love to put arguments that 'the duty of the international community to help poverty-stricken societies is not absolute because they are not responsible for this poverty'.⁶⁷ This is nothing but a 'mockery about the life of human beings into poverty'.

The economic and social wellbeing of people is a major agenda of economic, social and political development, as it is so pointed out by the UN Declaration of the Rights on Development. However, the right to the economic and social wellbeing of people has historically become the victim of the capitalist globalisation tendency, which is essentially composed of the consumerist exploitative notion of development. The issue of the economic and social progress of human being was raised first time by some less powerful countries as an indispensable element of human rights at the San Francisco Conference, 1945.

⁶³ . Ibid., p.24.

⁶⁴ . See, Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reform*; Cambridge: Polity 2002, p. 2.

⁶⁵ Ibid, p. 98.

⁶⁶ Ibid (n.64), pp.99-100.

⁶⁷ See, Thom Brooks, "Is Global Poverty a Crime", p. 2, available online at <http://ssrn.org/abstract>, last visited October 29, 2011.

The discussion at the Conference had adequately reflected on the necessity of 'economic progress of the people the entire world' as a precondition for peace and democracy. Norway, for instance, had put forward the following proposal:

*“In any new world order the great powers will have to shoulder the main burden of providing the military and material means for maintaining peace, and we are prepared to grant them an international status corresponding to their responsibility and power. But at the same time, we have a strong feeling that also moral standards should be taken into account...To defend life, liberty, independence, and religious freedom to preserve human rights... It is obvious that lasting peace must be based on economic progress and social justice... It must be one of the main tasks of the new International Organisations to secure increasingly higher standards of living and social security for all”*⁶⁸

This proposal specifically highlighted the importance of economic development and social justice as the bedrock of peace and sustainable human rights protection. Bolivia had added a proposal demanding that the Economic and Social Council of the United Nations be mandated:

*“to achieve concerted action to promote the economic development, the industrialization, and the raising of the standard of living of less favored nations as well as the protection of the international rights of man, the perfecting of social security and the provision of the material opportunities for work, the solution of problems of health and population and others of a similar nature”*⁶⁹

This proposal sounded quite ambitious but for many States, it was not enough. Some countries went further to put the proposal in this regard. Argentina, for instance, insisted for equal access to capital goods,⁷⁰ and France argued for fair distributions of raw materials as part of the Economic and Social Council's mandate.⁷¹ These proposals were however rejected by America. The San Francisco Conference failed to properly address the necessity of emphasising the 'economic development and social security of people across the world'. This demand is now reiterated by the 'proposal of economic corridors and trans-regional connectivity' proposed and initiated by "Belt and Road Initiative". In this sense, the Belt and Road initiative can be taken as an instrument turning the economic and social development of the world into reality.

The major reason behind this limited attention of the UN to the economic and social development was that the founders of the United Nations at San Francisco conference were the most influential countries and most of them had already well-developed economies. The matter of economic development thus could not be an issue of priority of debate for them. They were thus virtually guided by a

⁶⁸ Document of the United Nations Conference on International Organization, (UNCIO) San Francisco 1945, Vol. 1, p. 554. See also vol.3, p. 355, 366 and vol. 6, p. 430-432.

⁶⁹ UNCIO (n. 68), vol.3, p. 586.

⁷⁰ UNCIO (n. 68), vol.10, p. 84.

⁷¹ UNCIO (n. 68), vol.3, p. 388.

misconception that what they were making the UN was 'an institution for collective security' but not an institution which could take responsibility for the economic development and social security of the poor people of the world.⁷² Most importantly, the United States of America was very much opposed to any language about social/economic rights from the very beginning, seeing it as an opening for socialism.⁷³ It was that nasty anti-poor people politics that stood as a stumbling block for the inclusion of economic and social rights as equally important human rights. In subsequent days, the attitude of the developed countries to economic and social development agenda became further antagonistic. These rights were considered as 'offshoots' of the socialist or communist ideology, thus apt to be rejected in any cost. It was the gravest injustice of the developed countries to the poor people of the world. This anti-poor and anti-developing countries notion in the post-1945 era was primarily responsible to 'establish an exploitative pro-western globalisation which is posing a threat of genocide of language, culture, civilisation and political significance of smaller nations'. The Belt and Road initiative, on the other hand, brings a new perspective for sharing of efforts for development of all nations through connectivity and mutual collaboration.

The grotesque state deprivation of millions of people is subjected to live in is, to a larger extent, an 'outcome of the attitude of the western developed countries to neglect the responsibility of dealing with the crisis or poverty the poor people of the world are facing'. They declined or refused to develop an international law regime that could promote an initiative to benefit the developing and underdeveloped countries' efforts of economic and social transformation. The concept of the economic corridor under belt and road initiative has potentially been a program to bring the 'humanistic international law regime into reality'. The belt and road initiative is backed by the following instruments of international law, or it can also be said that the initiative will be translating the following international law instruments into practice, thus protecting the lives of millions of poor in the world:

Resolution 1028(XI) Land-Locked Countries and the Expansion of International Trade

The UN General Assembly adopted this resolution on 20th February 1957 to recognise the need of land-locked countries for adequate transit facilities in

⁷² Much of the world was still colonized. Western colonial States were not sincere to the people of the colonized world. They did not treat the people of the colonized parts as 'equal to that of developed countries'. The sorrow and problems faced by the people of colonized countries were not taken as violation of human rights as such people were not defined as 'civilized people'. See for detail discourse, Schirijver, van Genugten, Homan, de Waart, 2006, *The United Nations of the Future: Globalization with a Human Face*. Amsterdam: KIT Publishers, p. 89.

⁷³ Otto Spijkers, 'Human Rights and Development from an international, Dutch and personal perspective.' Available at <http://papers.ssrn.com>.

promoting international trade. The resolution invited the Governments of Member States to 'give full recognition to the needs of Land-locked Member States' in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries. The belt and road initiative has a practical significance to implement this resolution. With this initiative, a land-locked country like Nepal can address the problem of transit and trade. The belt and road initiative is thus a boon for land-locked countries like Nepal. Nepal, as a landlocked country, under this initiative can enjoy the following rights granted by the international law to it:

- Free and unrestricted transit to sea via China and India, and beyond.
- The flow of investment for developing industrial or productive enterprises.
- Enhancement of competitiveness of goods in the international market.
- Development of better infrastructure within own territory and privilege of using use road and railway of China and India for connecting Maritime Silk Road.

The road and belt initiative will be boon for the relation between Nepal and India, which is often brought into a quagmire by trade and transit issues. Nepal has faced series of blockade from India, which, in turn, severely affected the friendly relation between two countries. The cooperation and interdependence to be generated by the road and belt initiative, through unhindered mutual network and connectivity, will be able to establish a stronger ground for the dependable and unproblematic relation between two countries. Even if the initiative does not take place among three countries, Nepal would be able to use convenient road and railway network to utilise the modern seaports of China and expand its trade in Central Asia by using these networks. Nepal, thus, takes belt and road initiative as an opportunity to implement the said resolution. It means that the initiative is an effort from the side of China to implement the said UN Resolution.

Montevideo Convention on Rights and Duties of States 26 Dec. 1933

The belt and road initiative is a commitment to implement the Montevideo Convention on Rights and Duties of States. This convention is a customary international law concerning rights and duties of States, which is reinforced by Article 2(1) of the UN Charter that recognises the principle of sovereign equality of Nations. The belt and road initiative is a reaffirmation of the 'international law that requires Nations to collaborate in addressing the poverty, which constitutes a major cause of war'. The initiative calls for the end of economic disparity among nations as that exists mainly due of lack of adequate finance for competing in the international market. The initiative brings a prospect for such nations to

collaborate in building high standard infrastructure and developing competitiveness in productivity.

Article 1 of the Convention defines “State” as a person of international law, which should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. Nepal is a country with its long history, at least 2500 year’s recorded history of statehood. The “*Chanakya*”—an ancient *Maghadi*, (present India) strategist, during 350 B.C., mentioned Nepal as an important country having trade with his nation, the *Maghada* Empire. The belt and road initiative, by building a prospect of mutual cooperation through connectivity, recognises the principle of equality of nations, which is an opportunity for development as well as means of safeguarding the independence and protection against interference.

Article 4 of the Convention states that ‘States are juridically equal, enjoy the same rights, and have equal capacity in their exercise’. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law’. The belt and road initiative reduces the provision into practice.

Exactly as provided by the Convention, States have the freedom to choose their political, economic and administrative systems. Hence, ‘no state has right to intervene in the internal or external affairs of another’. The belt and road initiative does not make the political system of any nation as a precondition for collaboration and connectivity. The initiative is a rational notion of cooperation as such it contributes to the consolidation of international relations envisaged by the Convention.

Vienna Program of Action for Landlocked Developing Countries for the Decade 2014-2024⁷⁴

By recognizing the ‘special development needs and challenges of landlocked developing countries arising from landlocked-ness, remoteness and geographical constraints in a more coherent manner and thus contribute to an enhanced rate of sustainable and inclusive growth⁷⁵’, the program instills obligations for landlocked states as well as transit states in relation to trade and transit, especially for the purposes of economic development. The program has specified six specific areas for holistic development of the landlocked developing States. They are:

Priority 1: Fundamental transit policy issues

Priority 2: Infrastructure development and maintenance

⁷⁴ *Second United Nations Conference on Landlocked Developing Countries*, Vienna, 3-5 November 2014.*A/CONF.225/L.1

⁷⁵ *Ibid*, para. 21

- (a) Transport infrastructure
- (b) Energy and information and communications technology infrastructure

Priority 3: International trade and trade facilitation

- (a) International trade
- (b) Trade facilitation

Priority 4: Regional integration and cooperation

Priority 5: Structural economic transformation

Priority 6: Means of implementation

The defined priorities emphasise reducing ‘transit time and promoting infrastructure and maintenance, ensuring trade facilitation measures in an accelerated manner besides linking them with the promotion of economic diversification, structural transformation, connectivity to global value chains and regional integration’. However, the program doesn’t have provisions for ‘sanctions but only calls upon the General Assembly to ‘continue to undertake reviews of the implementation of the present Program of Action through reports of the Secretary-General.’⁷⁶ These priorities are categorically addressed by the belt and road initiative. In this context, the initiative can be described as an effort to implement the Vienna Program of Action for Landlocked Developing Countries for the Decade 2014-2024.

Convention on the Law of Sea (UNCLOS):⁷⁷ Article 39(1) (a) of UNCLOS states that all goods carrying vehicles are to ‘proceed without delay through or over the strait. Article 39 (1) (b) further states that they must refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations. Furthermore, as per Article 39 (1) (b), the use of force against a sovereign country is prohibited, and an obligation to respect territorial integrity is imposed. Article 39 (1) (c) states that vehicles must ‘refrain from any activities other than that incident to their modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress’.

Part X of UNCLOS, namely article 124 to article 132, is based on the ‘Right of Access of Land Locked States’ to and from the Sea and Freedom of Transit. As per Article 124 (1) and 124 (2), Nepal and India can respectively be denoted as a landlocked state and a transit state. The following provisions in this regard are worth mentioning:

⁷⁶ Ibid para 76

⁷⁷ UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982, available at: <http://www.refworld.org/docid/3dd8fd1b4.html>, accessed 13 December 2015.

- Article 124 (1) (a): “land-locked State means a State which has no sea-coast;
- Article 124(1) (b): “Transit State” means a State, with or without a sea coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;
- Article 124 (1) (c): “traffic in transit” means transit of person, baggage, goods, and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a complete journey which begins or terminates within the territory of the land-locked State;
- Article 124(1) (d): “means of transport” means (i) railway, rolling stock, sea, lake, and river crafts and road vehicles; (ii) where local conditions so require, porters and pack animals.
- Article 125 (1): The Land-locked States shall have the rights of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of the mankind. To this end, land-locked States shall enjoy freedoms of transit through the territory of the transit States by all means of transport.
- Article 127 (1): Traffic in transit shall not be subjected to any customs duties, taxes, or other charges except levied for the specific services rendered in the connection with such traffic.
- Article 127(2): Means of transport in transit and other facilities provided for and used by land-locked States shall not be subjected to taxes or charges higher than those levied for the use of means of transport of the transit State.

The right of land-locked State is evidently a right provided for by the international law. It means that ‘the right cannot be taken as a ‘mercy or concession’ of the transit State. Nepal is a party to the 1982 Sea Convention. However, in the past, Nepal has seriously faced the crisis of transit. The belt and road initiative in its full implementation is a reliable solution the transit crisis Nepal has faced in the past. The intuitive action can be described as an action plan of developed by China, as a coastal State, for relieving the transit problems of the land-locked countries. The sea-law significance of the initiative is thus immense.

Implementation of Asian Highway Agreement, (Intergovernmental Agreement on the Asian Highway Network, 18 November 2003)

This agreement was concluded for the purpose of ‘access to the sea for trading and transit for the landlocked nations and for their economic integration’.^{41,000}

KM long this highway is supposed to provide transportation network to Asian landlocked nations. This highway is being built with an intention to improve transport facilities throughout Asian nations and provide road link to Europe. The Asian Highway project comprises of three projects, the Trans-Asian Railway being another significant component. Nepal and India both are parties to this agreement and project. India and Nepal cover 11,432 km and 1,321km respectively.⁷⁸The agreement, thus, provides a stronger precondition for the smooth implementation of the belt and road initiative. India being a party to the Asian Highway may have no sound reason to avoid being a part of the China, Nepal and India corridor.

The UN meeting in Almaty in 2003 served as the additional impetus for agreement between landlocked and transit countries on the importance of integrated transport and the possibilities for cooperation. Moreover, Bangladesh, Nepal, India and Bhutan have 'signed the Motor Vehicle Agreement' on 15 June 2015 in Thimpu. The agreement intends to regulate passenger, personal and cargo vehicular traffic. Aside from facilitating the cross-border movement of passengers and goods, the agreement is expected to promote safe, economically efficient and environmentally sound road transport in the sub-region, and to create an institutional mechanism for regional integration.⁷⁹ The agreement is also expected to increase trade in the region by 60 percent. This agreement along with Asian Highway Agreement provides an adequate legal framework for the implementation of the 'China, Nepal and India economic corridor'. Any reluctance of any country with regard to being a part of this corridor may result in the violation of the international principle of '*pacta sunt servanda*'.

Convention on Transit Trade of the Land-Locked States, 1965

The convention lays out '8 principles to take into account concerning the rights and duties of both the landlocked states and the transit states'. The Principle I states that 'the recognition of the right of each land-locked State for free access to the sea is an essential principle for the expansion of international trade and economic development.' Principle III states that 'in order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea...' This convention, pursuant to these principles, provides adequate rights to Nepal, as a landlocked country, to be a part of the economic corridor with or without India.

Article 2 of the Convention deals with the freedom of transit. The sub-article (4) states that 'the Contracting States shall permit the passage of traffic in transit across their territorial waters in accordance with the principles of customary

⁷⁸ www.roadtraffick-technology.com/projects-highway-network. URL accessed on 7th March 2017.

⁷⁹ www.loc.gov/law/foreign-news/article/bangladesh-bhutan-india-nepal. URL accessed on 7th March 2017.

international law or applicable international conventions and with their internal regulations.’ In accordance with this article, Nepal and India are both obliged by international customary law, and the treaties that they have ratified, to ensure free trade and transit across the borders.

Article 12 of the Convention states about exceptions in case of an emergency, stating that ‘the measures of a general or particular character which a Contracting State is obliged to take in case of an emergency endangering its political existence or its safety may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this Convention on the understanding that the principle of freedom of transit shall be observed to the utmost possible extent during such a period.’

General Assembly Resolution 2131 (XX) of 21 December 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Sovereignty

Article 1, paragraph 2, of the Charter of the United Nations, establishes the principles of equal rights and self-determination of peoples as a foundation of “friendly relations among nations”. The Resolution 2131 (XX) goes on, in its preamble, expressly to cite resolution 1514 (XV) on States’ “inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory and ... [to] freely determine their political status and freely pursue their economic, social and cultural development.” Any interference or attempt to interference is thus an issue of the violation of the UN principle of friendly relations between States. The State’s freedom to choose, in accordance with the UN Charter 2, its political, economic and administrative system is absolute’. The belt and road initiative is in full consonance with these provisions. The initiative is potentially an instrument to give effect to the resolution.

1970 Declaration On Principles Of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations (Gar 2625) Adopted By The Un General Assembly Resolution 2625 (Xxv) Of 24 October 1970

Principle 3 of the Declaration imposes a duty on States not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.” This convention is equally important to outline the relation between states. The belt and road initiative, as it is not against this resolution, cannot be considered as an instrument to interfere with the sovereign status of any nation. In contrary, the initiative is an instrument to deepen and expand the mutual relations among nations.

**SAARC Framework Agreement for Energy Cooperation (Electricity)
(27th November 2014)**

The framework agreement was concluded in order to facilitate cooperation 'regarding cross-border electricity exchanges, trade, optimal utilisation of regional electricity generating resources, enhanced grid security, and electricity trade arising from diversity in peak demand.' The agreement provides for dispute settlement through SAARC Arbitration Council. This agreement provides another substantive precondition for the implementation of the China, Nepal and India economic corridor.

Bilateral Trade and Transit Agreements:

The first treaty between Nepal and India dealing with trade and transit was signed on July 31, 1950. It recognised without reservation the right of free transit of goods through the territory and the ports of India (it was renegotiated in 1960, 1971 and 1978). The 1978 treaties were supposed to be renewed when they expired on March 31, 1989, but in March, due to some problems that had surfaced between the two countries, the renewal was postponed⁸⁰. This certain political issue between Nepal and India had surfaced because of India's concern for Nepalese government's decision to import defensive military weapons from the People's Republic of China. It was two years later, after the formation of a completely new Nepalese government in 1991 that the Indo-Nepal treaty on trade and transit was signed again. The trade treaty between Nepal and India (2009) states that 'the contracting parties should grant maximum facilities and must take measures for the free and unhampered flow of goods between the countries.'⁸¹ It includes provisions related to exemption from basic customs duty⁸² and other provisions which are supposed to promote, facilitate, and expand trade between the two countries. The transit treaty (1999) includes provisions in relation to freedom of transit across respective territories⁸³, exemption from customs duties

⁸⁰ Kishor Uprety, 'The transit regime for landlocked states, international law and development perspective', World Bank, 1818 H Street, NW Washington DC, 2006, pp.127-129.

⁸¹ Article 2-The contracting parties shall endeavor to grant maximum facilities and to undertake all necessary measures for the free and unhampered flow of goods, needed by one country from other, to and from their respective territories.

⁸² Article 4-The contracting parties agree, on a reciprocal basis, to exempt from basic custom duty as well as from quantitative restrictions the import of such primary products as may be mutually agreed upon, from each other.

Article 6 – With a view to facilitating greater interchange of goods between the two countries, the government of Nepal shall endeavor to the maximum extend compatible with their development needs and protection of their industries.

⁸³ Article 1 – The contracting parties shall accord to "traffic-in-transit" freedom of transit across their respective territories through routes mutually agreed upon. No distinction shall be made which is based on flag of vessels, the places of origin, departure, entry, exit, and destination, ownership of goods or vessels.

and from transit duties except for reasonable charges⁸⁴, providing warehouse or shed for storage traffic in transit⁸⁵, provisions regarding the access and enjoyment of rights to high seas for Nepal.⁸⁶ The treaty also provides for the traffic in transit not to be subjected to avoidable delays or restrictions⁸⁷. Although this treaty has conferred the transit facility to Nepal, it has failed to recognise that Nepal is a landlocked country, and as such has a right of free access to and from the sea. This has made Nepal's transit right as a matter of reciprocity which is not reliable with the concept of the right of free of access of the land-locked states. According to Article 125 of the UNCLOS, the right of free access to and from the sea is not subjected to reciprocity, but it is unilaterally and solely available to land-locked States.

Nepal has also concluded various bilateral treaties in relation to trade and transit with other neighbouring states which includes treaties with Bangladesh, China and Pakistan. There are two agreements signed between Nepal and Bangladesh (Trade and payments agreement between Nepal and Bangladesh 1976 and Transit Agreement 1976). The transit agreement includes exemption from customs duty and from transit duties⁸⁸, also includes freedom of transit between the two countries⁸⁹. The protocol to the transit agreement between the two countries provides various points of entry and exit for movement of traffic-in-transit through their ports by all means of transportations⁹⁰. All these treaties provide collectively a sound pre-condition for the establishment of the China, Nepal and India economic corridor under belt and road initiative.

⁸⁴ Article 4- Traffic-in-transit shall be exempt from custom duties and from all transit duties or other charges, except reasonable charges for transportation and such other charges, as are commensurate with the costs of services rendered in respect of such transit.

⁸⁵ Article 5- For convenience of traffic in transit, the contracting parties agree to provide at point or points of entry or exit, on such terms as may be mutually agreed upon and subject to relevant laws and regulations prevailing in either country, warehouse or sheds, for the storage of traffic-in transit awaiting customs clearance before onward transmission.

⁸⁶ Article 7- In order to enjoy the freedom of high seas merchant ships sailing under the flag of Nepal shall be accorded, subject to Indian laws and regulations, treatment no less favorable than that accorded to ships of any other foreign country in respect of matters relating to navigation, entry into departure from the ports, use of ports and harbor facilities, as well as loading and unloading dues, taxes and other levies, except that the provisions of this article shall not extend to coastal trade.

⁸⁷ Article 6- Except in cases of failure to comply with the procedure prescribed, such traffic-in-transit shall not be subject to avoidable delays or restrictions.

⁸⁸ Article 3- Traffic-in-transit shall be exempt from customs duty and from all transit duties or other charges except reasonable charges for transportation and such other charges as are commensurate with the costs of services rendered in respect of such transit.

⁸⁹ Article 1- The contracting parties shall accord "traffic-in-transit" freedom of transit across their respective territories through routes mutually agreed upon.

⁹⁰ Protocol to the transit agreement between Nepal and Bangladesh - With reference to Article 1: It is agreed that the government of people's republic of Bangladesh shall designate the following points of entry and exit for movement of traffic-in-transit through her ports and other territory, by all means of transportation: Khulna-Chalna Port, Chitagong port, Biral, Banglabandh, Chilhati, and Benapole

There are also two bilateral agreements signed in between Nepal and China (The trade and Payment Agreement 1981 and the Trade and other related issue agreement 2002). The trade and payment agreement 1981 includes provisions which are intended towards developing trade and economic relation between the two countries. It states the provision in which the two states have agreed to utilise certain trading points for enhancing and developing the trade⁹¹. The provision for overseas trade between the two countries has also been mentioned in this certain agreements which state the usage of ports in relation to overseas trade⁹². The transit treaty is signed with China in 2016. The bilateral agreement with Pakistan (The trade agreement with Pakistan 1982) includes provision through which Pakistan could allow to use warehousing facilities as available in Karachi port.⁹³

Challenges and Prospects:

Candidly speaking, there are problems and challenges to materialise the project. The fate of South Asia is ill-stricken by on-going controversies and suspicions among the members. Naturally, SAARC, as a community of the South Asian countries, could be a dependable vehicle to materialise this project. The same, however, at this point is unlikely. The SAARC has not been able to grow up and become more than a 'talking shop'. The distrust and suspicion creeping into the minds of the politicians in the SAARC is one of the most serious deadlocks in the development of South Asia. It can also be argued that the emergence of trust and confidence among the members of SAARC in the near future is unlikely. As a matter of fact, the China-Nepal-India corridor must work hard to develop trust among and between them. The building of consensus is thus a vital issue. This can take place in the following paradigm:

- a. China and India must have intensive discourse between themselves to initiate the project as soon as possible. The People Republic China has to adopt a pro-active approach to prepare India to initiate the project.
- b. Nepal must engage in people to people level dialogue for making the project viable, and the Government of Nepal must assure the Government of India regarding its concerns if any. The SAARC level discourse at think tank level must identify a group of academic institutions

⁹¹ Trade and Payment Agreement (Nepal and china) Article 7- In order to develop the trade overland between the two countries the two contracting parties agree to utilize the following trading points along their frontiers at Kodari/Nyalam, Rasuwa/keyring, Yari(Humla) and Purang,

⁹² Article 10 states, "The trade overseas between the two countries shall be, in the case of export from China, on the basis of C.I.F Calcutta or other ports on which both Parties have agreed, or of F.O.B China's port; and in case of export from Nepal on the basis of F.O.B Calcutta or other port on which both parties have agreed or of C.I.F. China's port."

⁹³ Trade agreement with Pakistan, 1982, art 8(3) states, "The government of Pakistan will allow use of warehousing facilities as available from time to time at Karachi port / airport of Nepalese cargo for movement to up-country in Pakistan and for trade with third country."

and conduct research collectively in order to justify the benefits of the project and suggest measures to avoid any misgivings among the stakeholders. Nepal has to take lead in media dissemination and dialogue among the civil society.

- c. Nepal's political situation is consistently transitional and stricken by instability. The present level of instability, the weakness in the delivery of the government institutions, very poor infrastructure conditions, and distrust among the political actors will pose a number of challenges to initiate the project at a rapid pace. The relation between Nepal and India and the relation between China and India are still complex and intricate. This situation requires more and more engaged communication and dialogue between them.
- d. The suspicion of the western developed countries regarding BRICs and AIIB and the possible emergence of a new economic order also poses a serious challenge to implement the project. The massive rises of the economy, as well as China and India's potential of emerging as regional powers, are considered by the West as a threat to their conventional dominance. The efforts of the West to cause harms to the emerging cooperation between China and India also poses a serious snag. The Indian media, which is largely influenced by the western think tank, is playing no congenial role to promote the project. In such a situation, Nepal can be a hub of intrusion against China and India, thus making Nepal further fragile in its political situation.
- e. Coordination between China and India is thus a key for the successful implementation of the project. But a confident Nepal is also an equally important precondition. This confidence, however, may emerge once the construction of belt and road is initiated. The vital and unavoidable role thus lies on the political actors of Nepal. The people of Nepal need education in this regard. The thinkers of Nepal must come out of hibernation.
- f. Nepal's role in convincing India and getting rid of its past mindset is important. For this, Nepalese think tank must strive to communicate and have dialogues with Indian counterparts. Nepal must play a crucial role to revive the significance of SAARC as a regional cooperation mechanism. Nepal can contribute bridging the gap between Chinese and Indian think tanks on the one hand, and Pakistani and Indian think tanks on the other. The people of Nepal must be made aware of the opportunity provided by OBOR. A national consensus should be built on this issue.

Recommendations:

The institutional deficiencies have extensively crept into the Statute of the SAARC. As it has been plainly seen from objectives under Article 1, SAARC, as

an institution, is not envisaged to provide a forum for 'building a collective regional will and personality'. SAARC has not been considered as a regional institution to act as an alternative mechanism for management and resolution of conflicts and problems looming in the region; it is, instead, envisaged to be a complement to the bilateral and multilateral socio-economic cooperation arrangements of the Member States. Article 2 of the Charter presents a serious hurdle for SAARC to emerge as a 'regional personality'. The Charter under Article 2 meticulously inhibits the idea of 'SAARC' as a community with its independent personality. As a matter of fact, no institutional deficiencies of SAARC can be properly addressed without removing these inhibitions creeping in the Charter under its Article 2, 3 and 10. The reformulation of prevailing provisions, under Article 1 and 2, in order to enable SAARC to grow as a community with distinct 'international personality' is, thus, a primary step to be taken for its strengthening. SAARC countries must actively work together to address these deficiencies and achieve a state of desired integration. The mutual trade between SAARC countries must be enhanced. South Asia must grow as a viable market by promoting trade among members of SAARC.

SAARC is thirty-three years old now. However, its emergence as a community seems a far cry. The Charter is restrictive; the meetings of the leaders are decreasingly enthusiastic, and the institution is being virtually administered by bureaucrats of the member States. Willingness to integrate the region for the greater common goods of all requires proper management of the feuds or conflicts among members. India seems to be unwilling to expand potentials of the association and Pakistan, another dominant member, seems to be pessimistic regarding the viability of SAARC as a regional community. Smaller countries are caught between arguments of these two powers, and they are unable to break this impasse. This situation needs to be addressed in any manner possible. It is, therefore, a high time to consider the necessity for rebooting SAARC. Nepal, a neutral and less mistrusted member, could play a vital role in bridging the gap between India and Pakistan.

However, the failure of the Government of Nepal to hammer out a solution for convening the Summit in 2016 was costly. The Prime Minister of Nepal, in his capacity of the Chair, could negotiate with India and Pakistan to shift the venue of Summit one more time in Nepal and thus could save it from its present dormant situation. Nepal's Prime Minister's idleness, however, caused a loss of chance. This situation could also be positively exploited by Nepal to present its crucial role in mitigating the tension in the region. This chance was also not utilised either. For evolving SAARC as a viable institution, smaller neutral Nations like Nepal must enhance their diplomatic potentiality to bridge the gap between two rival members of the SAARC.

China and India must engage intensively at the diplomatic level to address any suspicion concerning Trans-Himalayan corridor and having China access to South

Asia via Nepal. India has been a member of BRICS and AIIB. Any excuse to feel unpreparedness concerning OBOR Nepal, China and India belt is unfounded and unreasonable. India will be the biggest beneficiary from this initiative. Nepal, Bangladesh, Bhutan and India have signed Motor Vehicle Agreement in 2015. This agreement provides free access for motor vehicles in each other's territory. One of the major preconditions for connection is thus achieved. An integrated SAARC can provide safer and smoother connection with China. Hence, the belt and road initiative must include coherent relation among SAARC members as one of the agendas.

Nepal must engage in diplomatic and people to people level communication and dialogues for facilitation of Nepal, China and India corridor. Nepal must convince India through think tank that 'Bihar and Uttar Pradesh along with Bengal' will be the biggest beneficiary of this initiative. India and Nepal both are parties to Asian Highway and Railway Agreement, 2014. The connectivity between Asian countries by Asian Highway is already established in principle. Nepal must evolve a consensus among all political parties in Nepal concerning OBOR benefits. This information must go down to the common people. Academic institutions can seriously contribute in this regard.

India must clarify its concerns with Nepal and China. Should there be some concerns regarding its security, India must plainly put them before China and Nepal and such concerns must be genuinely addressed by Nepal and China.

India must be aware that the 21st century market is not located in the poorly functioning economies of the West. The dominant economic market of future will emerge in Asia itself. It would thus be better for India to establish its network with Asian countries. South Asia is home to 22 percent of the world's population and also to 43 percent of the population of the world that lies beneath the poverty line. 60 percent of the poor South Asian Population comes from rural India. To address this problem, India has the better opportunity from OBOR. India has no option but to cooperate. If India is reluctant, even in this situation, Nepal and China must start working rapidly towards the goal. The following projects must be conducted in priority:

Nepal and China air connection must be established between Ali and Lumbini, and it will enhance the Buddhist and Hindu pilgrimage. Large number Indian devotees will begin to use this route, thus popularising the cultural interactions.

Nepal and China must enhance the connecting roads and trade between two countries. China railway must be connected to Nepal's border and extended to Kathmandu and Lumbini. Nepalese and Chinese universities must develop closer cooperation in matters of research and engaging students in knowledge of mutual concerns.
