111 Evolving Trends of UN Peacekeeping: Challenges for Bangladesh and its Responses
Md. Farid Uddin
Abu Salah Md. Yousuf

126 Regional Trade Liberalisation and Non-tariff Barriers: The Case of Bangladesh's Trade with South Asia
Mahfuz Kabir

147 India's Afghan Strategy: Revisiting Kautilya
Dalbir Ahlawat
Tahmina Rahman

166 Do the Weak and Collapsed States Pose a Challenge to the Realist Worldview?
Mohammad Zahidul Islam Khan

180 The South African Truth and Reconciliation Commission: Strategic Implications
Ahmedul Kabir
# Contacts

<table>
<thead>
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<th>E-mail</th>
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</tr>
<tr>
<td>Research Director-2</td>
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<td><a href="mailto:shaheen@biiss.org">shaheen@biiss.org</a></td>
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# TABLE OF CONTENT

**VOLUME 35  NUMBER 2  APRIL 2014**

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Md. Farid Uddin</td>
<td>Evolving Trends of UN Peacekeeping: Challenges for Bangladesh and its Responses</td>
<td>111</td>
</tr>
<tr>
<td>Abu Salah Md. Yousuf</td>
<td>Regional Trade Liberalisation and Non-tariff Barriers: The Case of Bangladesh’s Trade with South Asia</td>
<td>126</td>
</tr>
<tr>
<td>Mahfuz Kabir</td>
<td>India’s Afghan Strategy: Revisiting Kautilya</td>
<td>147</td>
</tr>
<tr>
<td>Dalbir Ahlawat</td>
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<td>166</td>
</tr>
<tr>
<td>Tahmina Rahman</td>
<td>The South African Truth and Reconciliation Commission: Strategic Implications</td>
<td>180</td>
</tr>
</tbody>
</table>
Evolving Trends of UN Peacekeeping: Challenges for Bangladesh and Its Responses

Abstract

Peacekeeping has emerged as one of the core activities of the United Nations (UN). Due to ground realities, the doctrines, principles and structures of peacekeeping have evolved in accordance with necessity. In the traditional phase, during the Cold War era, peacekeeping was mostly limited to monitoring and observation affairs. In the post-Cold War era, there was an expansion of peace operations and “minimum use of force”, where necessary, emerged as an acceptable norm of peacekeeping. In the consolidation phase, after 2000, peace operations emphasised on peace building affairs i.e., democratisation, institution building, security sector reform (SSR) and human rights protection. The phase of New Horizon, which started in 2009 indicating changing trends, focuses mainly on development, capacity building, planning and oversight. It can be argued that the future peace operations are going to be more robust and multidimensional, and would concentrate on responsibility to protect civilians, human rights and environmental issues, gender mainstreaming, democratisation and institution building to achieve sustainable peace in the conflicting areas. Being a leading troops contributing country, Bangladesh will face new challenges to adapt with the emerging trends of UN peace operations. The challenges include dealing with new doctrinal issues and capacity building of its peacekeepers in the field level. In this respect, the main objectives of this paper are to understand the changing trends of UN peacekeeping and to identify potential challenges for Bangladesh and its likely responses in the coming days to continue its contributions in the UN peace operations.

1. Introduction

Since its formation in 1945, the UN has been remarkably contributing to global peace and stability. The UN peacekeeping started in 1948 through deployment of the UN military observers in the Middle East, known as the United Nations Truce Supervision Organization (UNTSO), to monitor the Armistice Agreement between Israel and its Arab neighbours. Since then, the UN operated 69 peacekeeping missions.

Md. Farid Uddin, psc, G, is Colonel in Bangladesh Army currently serving as Research Director at Bangladesh Institute of International and Strategic Studies (BIISS), Dhaka. His e-mail address is: farid2748@gmail.com; Abu Salah Md. Yousuf is Research Fellow at Bangladesh Institute of International and Strategic Studies (BIISS), Dhaka. His e-mail address is: yousuf@biiss.org

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in the conflict prone areas of the world. At present, there are 16 peacekeeping missions including one political mission in Afghanistan. The doctrines and structures of the peace operations have shifted and changed to adapt with field level realities. Previously, the responsibilities of the peace operations were to observe the situation and to maintain stability between or among the conflicting groups. In the post-Cold War era, the UN peace operations involved peace enforcement, where peacekeepers were allowed to use minimum force for achieving peace.

The failure of its missions in Liberia, Bosnia and Haiti in the late 1990s persuaded the UN to make a fresh assessment of its peacekeeping missions. The Brahimi report in 2000 recommended an extended doctrinal and structural shift of the UN peacekeeping. At present, it reached a phase called New Horizon that sets a comprehensive doctrine for the future peacekeeping operations.

Bangladesh is one of the highest troop contributing countries to the UN peace operations. The adoption of new doctrines, changing global order, altering nature of the conflicting groups and technological modernisation indicate that Bangladesh will need to invigorate its training and preparation to ensure its respectable position in the UN peace operations. In this respect, the main objectives of this paper are to understand the evolving trends of UN peacekeeping and to identify emerging challenges for Bangladesh and necessary responses to continue its contribution in the UN peacekeeping missions. The paper is divided into five sections including introduction and conclusion. Section two highlights the evolution of the UN peacekeeping since 1948. Section three elaborates the reforms recommended by Brahimi report, which is considered as the key document to determine contemporary doctrinal and operational trends of the UN peacekeeping. And section four identifies the challenges for Bangladesh and its responses to adapt with the emerging trends of UN peacekeeping.

2. Evolution of UN Peacekeeping

The visions of the UN are echoed in the charter of the organisation, which was signed on 26 June 1945. The charter describes that the main objective of the UN is to “save succeeding generations from the scourge of war”. It also underlines that one of the important responsibilities of the UN is “to maintain international peace and security.” The scourge of two World Wars convinced all nations of the world that without a combined effort to maintain global peace and security, humanity may have to face wars again. Although the issue of peacekeeping is not explicitly mentioned in the UN Charter, it has evolved as one of the main tools to achieve the goals of the UN. As such, peacekeeping operations are based on weak legal provisions as there is no

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2 Ibid.
direct reference in the UN Charter. To justify peacekeeping activities, Secretary General Dag Hammarskjold remarked that peacekeeping might be placed as its own chapter "six and a half" of the UN Charter. The UN peacekeeping operations always remain as a focused area of UN activities. Hence, the principles, functions and objectives of the peacekeeping evolved through precedents and customs. The UN used previous organisational and operational experience to determine its future activities.

At the beginning, peacekeeping was limited to observer missions. The first two missions, occurring in 1948 and 1949, involved mostly the tasks that were undertaken by the League of Nations, the preceding organisation of the UN. They were the UN Truce Supervision Organization (UNTSO) in the Middle East and the UN Military Observer Group (UNMOG) in India and Pakistan. The UN Secretary General directly controlled the employment of military personnel provided by the contributing nations. The two missions, which continue till today, mostly work on monitoring and observing the situation and remain active to prevent any escalation of conflict among the hostile groups. These two military observers were also unarmed. The armed peacekeeping was introduced first in the UN Emergency Force (UNEF I) in 1956 to address the Suez Crisis. The first large scale UN peacekeeping was deployed in Congo in 1960. The mission had nearly 20,000 military personnel. In the 1960s to 1970s, the UN established short term missions in the Dominican Republic, West New Guinea, Yemen, and Cyprus and in the Middle East.

The period, beginning in 1948 up to the end of Cold War, is known as traditional phase of peacekeeping. The deployment of any peacekeeping force was always carefully scrutinised in the Security Council due to rivalry between the US and the former USSR. The UN was not always capable of addressing security issues adequately. The failure of the UN caused states to move away from a system of collective security and towards a system of collective defence. The world was divided into two blocs, the US-led North Atlantic Treaty Organization (NATO) and the former USSR-led Warsaw Pact. However, in the traditional phase, the main objectives of the peacekeeping were limited to maintaining ceasefire and stabilising situation on the ground, providing crucial support for political efforts to resolve conflict by peaceful means. The missions had some distinguishable features: consent and cooperation of parties to the conflict, international support of the UN Security Council, UN command and control, multinational composition, no use of force, neutrality of UN force between rival armies and political impartiality of the UN relationships towards the rival states.

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The main roles of the peacekeeping forces were to prevent escalation of conflict and mediation among the hostile groups.\(^7\)

The end of the Cold War put an end to rivalry between the US and the former USSR. The US emerged as a super power in global politics. It gave rise to unprecedented cooperation among the five permanent members of the UN Security Council. The period saw a sudden expansion in the UN peacekeeping operations. In 1988, there were only 13,000 peacekeepers involved in eight operations. But, in 1994, the number of peacekeeping operations increased to twenty four, involving 76,500 peacekeepers.\(^8\) Moreover, a new set of crisis has put the UN to be more active in the peacekeeping operations. The previous operations were mostly concentrated on the issues of organised violence between the states fighting over an international border. In the post Cold War era, the UN was faced with new type of emergencies—“collapsed state structures; humanitarian tragedies caused by starvation, disease of genocide; large scale fighting and slaughter between rival ethnic or bandit groups; and horrific human rights atrocities”.\(^9\) The UN felt the necessity of using some degree of force to stabilise conflicting situations. Its operations did not remain limited to maintaining stability between the conflicting countries, rather it also got involved in mediating and stabilising the internal conflicts in many countries. The period covers approximately from 1989 to 2000. The major operations, during the time, were in the countries like Angola, Cambodia, El Salvador, Mozambique and Namibia.

In the post-Cold War era, peacekeeping missions took the responsibility of multidimensional activities. They were designed to ensure the implementation of the comprehensive peace agreements, assist in laying the foundations of sustainable peace, stabilise security situation, reorganise military and police and elect new government and build democratic institutions.\(^10\) The peacekeepers undertook a wide variety of complex tasks of helping to build sustainable institutions of governance, human rights monitoring, security sector reforms (SSR), disarmament, demobilisation and reintegration (DDR) of former combatants. In addition to military forces, different professionals engaged in the peacekeeping missions—administrators, police officers, legal experts, de-miners, electoral observers, human rights monitors, civil affairs and governance specialists, humanitarian workers, communication and public

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Evolving Trends of UN Peacekeeping

The command and control of the peace operations also found a new structure with three tiers of decision making and implementation process: strategic level, operational level and tactical level.

**Figure 1: Levels of Decision Making**

- **Strategic**
  - Security Council
  - Secretary General
  - UN Secretariat
  - Under-Secretary-General DPKO
  - Head of Mission

- **Operational**
  - Mission Headquarters & Leadership Team
  - Component Heads

- **Tactical**
  - Civilian Units
  - Military Units
  - Police Units
  - Regional Offices


In the strategic level, objectives and frameworks of a peace operation are confirmed by the UNSC, in the operational level, the mission headquarter plans to implement the decisions of the UNSC and in the tactical level the operations divided in different units like military and police to implement the priorities of the mission.

The 1990s expansion of peacekeeping continued till the end of the decade. But the success of the operations came under challenge. The UN extended its operations, management capacities, efficiency, resources, political and financial supports but it did not mitigate accordingly. In fact, the problems in Somalia and

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Bosnia, and the “disastrous” mission in Rwanda “promoted a period of retrenchment” for peacekeeping operations. The Security Council, particularly the US, was reluctant to authorise, implement or finance new peacekeeping operations. The total deployment of UN military and civilian personnel fell from its peak in 1993 of more than 80,000 to approximately 14,000 in 1998. During this time, civilian casualties rose, hostilities continued and the reputation of UN peacekeeping suffered.

To identify the problems, Secretary General commissioned an independent inquiry into the actions of the UN during the 1994 genocide in Rwanda and, at the request of the General Assembly, provided a comprehensive assessment on the 1993-1995 events in Srebrenica in the former Yugoslavia. The circumstances that led to the UN withdrawal from Somalia were also carefully examined. In the meantime, UN peacekeepers continued their long-term operations in the Middle East, Asia and Cyprus.

3. Brahimi Report and Emerging Trends

In March 2000, the UN Secretary General appointed a panel to assess the shortcomings and difficulties of the then existing system and to make specific and realistic recommendations for change. The panel was composed of individuals experienced in conflict prevention, peacekeeping and peace building. The panel submitted its report in August 2000. Since Lakhdar Brahimi led the panel, the report is known as the “Brahimi Report”. It mainly recommended three issues: (i) renewed political commitment on the part of member states to continue peacekeeping operation; (ii) significant institutional change; and, (iii) increased financial support. The report also emphasised that the UN should take preventive measures to contain potential crisis in the conflict-prone areas. The panel noted that in order to be effective, the UN peacekeeping operations must be properly resourced and equipped, and operate under clear, credible and achievable mandates.

Brahimi report introduced a wide range of doctrinal and structural change in the UN peacekeeping missions. Firstly, the report started focusing on the peace building issues, which would help to stabilise conflicting areas and showed the ways to achieve sustainable development. Secondly, the UN established a High Level Panel on Threats, Challenges and Change. The objective of the panel was to set out a broad framework for collective security for the new century. Thirdly, the Department of Peacekeeping Operations (DPKO) was split into two, creating a new and separate

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12 J. P. Bailke, op. cit.
body named Department of Field Support (DFS). The lack of administrative supports at the field level was addressed by establishing DFS. Fourthly, after Brahimi report the UN started engaging regional organisations in the peacekeeping missions. In 2007, the UN engaged the African Union (AU) troops in the peacekeeping operations. It helped peacekeepers to get political support regionally as well as human and resource support for the missions. Fifthly, based on the recommendations of Brahimi report, in 2008, the UN published *Capstone Doctrine*, which outlined the most important principles and guidelines for UN peacekeepers in the field. The *Capstone Doctrine* adopted five-step peace processes conflict prevention, peacemaking, peacekeeping, peace enforcement and peace building.

![Figure 2: Steps of UN Peacekeeping Missions](source)

Conflict prevention involves diplomatic initiatives to engage relevant stakeholders to contain inter-state and intra-state tensions and disputes escalating into violent conflict. Peacemaking works when conflict is in progress and involves diplomatic initiatives to bring the hostile parties in a negotiation agreement. Peacekeeping is aimed at maintaining peaceful environment to prevent further escalation of conflict. Peace enforcement involves the use of minimum coercive measures under the explicit authorisation of the UN Security Council. Peace building seeks to attain sustainable peace after resolving conflict among the hostile groups.
After Brahimi report, the UN peace operations regained global commitment for political and financial support for peacekeeping missions.\(^\text{15}\) It helped to begin institutional change, which made it easier to implement complex peace agreements and to stabilise security situation. Moreover, the UN missions became more aware about the human rights issues in different regions. Brahimi report augmented an era of consolidation in the UN peace operations. Despite fear of escalating conflicts, the UN has successfully created an opportunity for self-determination for the people of East Timor.

The peace operations in the contemporary period stretched like never before and increasingly called upon to deploy to remote, uncertain operating environments and into volatile political contexts.\(^\text{16}\) It faced a varied set of challenges, including challenges to deliver on its largest, most expensive and increasingly complex missions, challenges in design and execute viable transition strategies for missions where a degree of stability has been attained, and challenges to prepare for an uncertain future and set of requirements. In this respect, in 2009, to face the new challenges, the UN developed a document named *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*. The document identified a wide range of challenges as well as recommended to adapt with the emerging realities in the operating areas of the UN peacekeeping. The report denotes the future trends of the UN peace operations and how the organisation needs to prepare to address the upcoming challenges in this regard.

The main objectives of the report were to assess the major policy level and strategic dilemmas facing UN peacekeeping today and over the coming years and reinvigorate the ongoing dialogue with stakeholders on possible solutions to better adjust UN peacekeeping to meet current and future requirements.\(^\text{17}\) The New Horizon recommendations are applied to DPKO and DFS. As part of the New Horizon initiative, in early 2009, DPKO and DFS commissioned an external think-piece by the Center of International Cooperation (CIC) *"Building on Brahimi: A Coalition of Peacekeeping in an Era of Strategic Uncertainty"*, to help stimulate discussion on the challenges and opportunities for UN peacekeeping. The CIC piece is an independent, external contribution to the process. It does not reflect or prejudice the views of DPKO and DFS. The New Horizon is keen to address the emerging challenges considering duration and effectiveness of the peace operations. It recommended for a global partnership with three dimensions: a partnership in purpose, a partnership in action and a partnership for the future.\(^\text{18}\) A partnership in purpose emphasises on a more

\(^{15}\) Bruce Jones, Richard Gowan, and Jake Sherman, *"Building on Brahimi Peacekeeping in an Era of Strategic Uncertainty"*, NYU Center on International Cooperation, New York University, April 2009.

\(^{16}\) Cedric De Conon, *"The Emerging UN-AU Peacekeeping Partnership"*, *Conflict Trends*, Issue. 1, 2010.


\(^{18}\) *"A New Partnership Agenda: Charting a New Horizon for the UN Peacekeeping"*, Department of Peacekeeping Operations and Department of Field Support, New York, July 2009.
inclusive approach in designing, planning and managing UN peacekeeping missions. A partnership in action agreed on approaches and capacities required to implement this vision on the ground and to deliver critical tasks, as well as to manage crises. A partnership for the future is a collective dedication to building and sustaining the right capabilities for UN peacekeeping into the future, by examining new ways of drawing on global resources and flexible, innovative measures to deploy and support peacekeepers in the field.

The New Horizon agenda is based on four major operational principles - policy development, capacity development, global field support strategy, and planning and oversight. Policy development is about clarifying the critical roles and responsibilities of peacekeepers and developing practical guidance in specific areas, including the protection of civilians, peace building roles of peacekeepers, and effective and robust response to threats. Capacity development focuses on filling critical capability gaps in peacekeeping missions in a forward-looking and sustainable manner and ensuring peacekeepers are prepared, equipped, and enabled to deliver against reasonable performance expectations. Global field support strategy includes service delivery in the field through efficient and effective support arrangements and improved accountability and resource stewardship. Planning and oversight is about bolstering consultations among stakeholders and ensuring more effective and inclusive arrangements for planning, management, and oversight of missions.

The New Horizon reinvigorates some of the issues of the UN peacekeeping operations like DDR, rule of law and electoral assistance. Moreover, it also includes new issues where the peacekeeping missions need to focus. The protection of civilians is an important strategy adopted in the New Horizon approach. Gender and peacekeeping issues are also getting more attention. The UN is more aware about preventing violence against women in the conflicting areas. The issue of environment and sustainability is also gaining focus in the peacekeeping strategy. The UN is more concerned to protect children in the conflicting regions. The refugee problems due to conflict are also included in the New Horizon agenda. In addition, the report of the Special Committee on Peacekeeping Operations in 2012 added the necessity of providing advanced technologies in peacekeeping operations and emphasised on sufficient training for the peacekeepers in the field level.

Overall, the New Horizon introduces new doctrinal issues in the UN peace operations for the future. It is also adopting new governance structure for UN peace operations and includes basic socio-economic issues in the peacekeeping agenda. In the field level, the emergence of Non-State Actors (NSAs) adds to new

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19 Ibid.
21 Ibid.
complexity for peacekeepers. Since NSAs have no structured leadership and their motivations are difficult to understand, it will be challenging to engage them in the negotiation process. To neutralise such NSAs, the peacekeepers will need modern and sophisticated technologies. Significantly, however, the operations in future will be more concentrated on peace building affairs. Therefore, the civilian affairs will increase in the peace missions.\textsuperscript{22} The New Horizon indicates that the future UN peace operations will focus on protection of civilians, women and children, institution building, protection of human rights, and ensuring environmental sustainability. Peacekeeping operations in future would be more robust and multidimensional than any time in their history.

4. Challenges for Bangladesh and Responses

Since independence in 1971, Bangladesh expressed its commitment for global peace and stability. Article 25 of the Constitution of Bangladesh states, “The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and principles enunciated in the United Nations Charter”. Bangladesh became a member of the UN in 1974 and since then the country has always raised its voice in all international fora in support of global peace and security. Bangladesh is pledge-bound to the principles enshrined in the UN Charter, the peaceful settlement of international disputes and to the maintenance of global peace and security. Therefore, the commitment of Bangladesh towards global peace and security is undisputable. The country is always keen and prepared to contribute in the UN peacekeeping operations and considers it as a national obligation to support global peace and stability.

In this respect, footprints of Bangladeshi peacekeepers are now evident in almost all of the troubled areas of the world, starting from Haiti to East Timor, from Lebanon to DR Congo. Bangladesh stepped into the family of ‘Blue Helmet’ through participation in UNIMOG (Iraq-Iran) in 1988 with 15 military observers from Bangladesh Army and Bangladesh Navy. Bangladesh Air Force joined United Nations Peacekeeping Operations (UNPKO) in 1993 while Bangladesh Police joined in 1989. As of today, Bangladesh has contributed in 54 out of total 69 UN peacekeeping missions where 1,26,489 Bangladeshi peacekeepers have participated. Currently, with the strength of 8,841 peacekeepers, Bangladesh is the highest peacekeepers contributing country in the world. On the way to achieving global peace, 119 Bangladeshi brave and valiant soldiers made supreme sacrifice by laying down their lives. Today, Bangladeshi peacekeepers have rightfully earned the credentials of “Role Model”

in global peacekeeping due to their professionalism, commitment, impartiality, integrity, and humane attitude.

Following the reforms in UN peacekeeping operations, the troop contributing countries like Bangladesh will have to cope with the changing situation to maintain the edge. This section highlights some newly emerged challenges for Bangladesh in UN peacekeeping which Bangladesh needs to address and some possible responses to cope with the reform processes in the UN. Now, the peacekeepers have more complex mandates to implement as appeared in the Brahimi report and New Horizon initiatives.

In the phase of New Horizon, the global peacekeeping operations are taking new issues in the peacekeeping agenda like protection of civilians, women and children, ensuring human security, and environmental security. Bangladesh needs to take immediate preparation to work with new doctrinal issues such as:

• The UN is now partnering with regional organisations, such as the African Union (AU), the European Union (EU) or North Atlantic Treaty Organisation (NATO) and in some cases sub-regional bodies. The most promising attempt to strengthen the peacekeeping partnership and cooperation seems to be with the AU and there is an attempt to establish African Standby Force (ASF), which will be in operation by 2015. There is a concern whether such initiative will reduce the number of Bangladeshi troops working in Africa.

• As such, Bangladesh’s peacekeepers need to enhance the technological expertise to enable them to respond to the challenges of the third generation high-tech driven peacekeeping operations.

• Effective and rapid deployment is one of the core issues in Brahimi report and in New Horizon process. Recent developments in South-east Asia point to a strengthening of more rapidly deployable peacekeeping troops and the ASEAN Security Community will be operational by 2015. Bangladesh needs to take preparation for rapid deployment.

In the contemporary peace operations, peacekeepers need multidimensional capacities. In this respect, capacity building would remain a challenge for Bangladesh. If peacekeepers know the language of the country where they are deployed, it would be helpful for them to deal with the issues of the region. Moreover, the use of modern technologies makes peacekeeping activities easy. Bangladeshi peacekeepers should be equipped with modern technologies and they should be adequately trained to use the technologies during their operations in the peacekeeping missions. Bangladeshi peacekeepers are mainly deployed in the field levels. Because of the sustained contributions Bangladesh made in the peace operations, the country deserves to be a part of the policy making and strategic levels of the UN peace operations. It may be mentioned that Bangladeshi peacekeepers successfully contributed in the senior
levels of military affairs of the peace operations. Nevertheless, it would be a challenge for Bangladesh to ensure its deserved positions in the peacekeeping activities. The country can raise the issue in the respective fora and can use diplomatic instruments to get its rightful positions in the UN peace operations.

The issues of peace building are getting more importance than before. The issues cover establishing democratic institutions, formation of state institutions like legislative and judicial bodies, ensuring rule of law and maintaining peace and security to prevent escalation of conflicts. Bangladeshi peacekeepers need to be more capable of helping peace building affairs in the UN missions. In this respect, peacekeepers, specifically involved in peace building matters, should be given prior training about the respective areas where UN missions work.

The emergence of violent NSAs is making peace operations more difficult than before. The NSAs and terrorist groups have no structured leadership. Hence, it is difficult to communicate with them to reach in any peace agreement. Moreover, the tactics used by the NSAs are also not always the same. The motivations of the violent NSAs are difficult to understand. Bangladeshi peacekeepers need to enrich their knowledge about the conflicting groups before deployment. It would make their work easy and effective. In this respect, Bangladeshi peacekeepers also have to develop their negotiation skills to deal with the conflicting groups. In the process of peace building, democratisation, institution building and promotion of electoral systems are very important nowadays. In the field level, peacekeepers need to know the primary issues in this regard. Being citizens of a democratic country, Bangladeshi peacekeepers are aware about the process of democratisation, yet they need to be aware about the local culture, traditions and practices too. It would increase their efficiency in the field level work.

Gender mainstreaming is a globally accepted approach to achieve gender equality and constitutes an essential part of UN Women’s work. As peacekeeping has evolved to encompass a broader humanitarian approach, female peacekeepers have increasingly become part of the peacekeeping family. Female peacekeepers from police, military and civil bodies are included in the peacekeeping missions which have made a positive impact on peacekeeping environment, both in supporting the role of women in building peace and protecting women’s rights. Bangladesh has been sending female peacekeepers mainly in medical sector. Bangladesh Police is sending female peacekeepers, which has earned good name and fame for the country.

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However, there are ample opportunities for sending more female peacekeepers in other areas too, specifically, in Protection of Civilians (POC) activities. POC activities take into account of the fact that women and girls are the main target of sexual violence by combatants. In this context, women can play important roles in assessing their vulnerabilities and threats they may face in a conflicting environment. This recognises the importance of women empowerment and incorporation of gender perspective of POC activities.

In many peace operating regions, UN missions face difficult infrastructural hurdles.\textsuperscript{25} The terrains of peace operation areas are not always friendly to ensure communication and to provide service for local people. In this context, Bangladeshi engineers and relevant experts could be involved in constructing infrastructures of the conflict zones. Such initiative is essential in the post-conflict areas to make peace sustainable and effective.

Most of the UN contingents are deployed for six months, but many of the Bangladeshi contingents stay one year or more. Due to financial considerations, most of the Bangladeshi soldiers do not visit their family during the entire period of mission. Such long stay in the mission causes psychological impact affecting their work. Some troop contributing countries arrange round trip visits for their soldiers. Bangladesh can also consider such initiative for its peacekeepers.

Bangladesh is one of the largest contributors in UN peacekeeping operations in terms of Armed Forces and police deployment. However, the presence of Bangladeshi civilian experts in the UN peacekeeping operations is very negligible. The organogram shows (figure 3) integrated mission structure has many posts for civilian experts. Overall, there is a high vacancy rate for civilian experts in the field. Bangladesh can fill in the gap by taking actions to send more civilian experts.

The military is trained for war which is closely tied up with nationalism and the doctrine of sovereignty and involves violence and destruction. Peacekeeping operations are very complex in present days and the mental frame and attitudes essential for a military contingent member in a peace operation and training methodology that can be adapted to build the mindset. Moreover, to make peacekeepers more confident, they should be given sufficient knowledge of language of respective area. Since most of the peace operations are in African region, the learning of French language would make peacekeepers more capable to deal with local people. The plan of establishing a Peace Building Centre in Bangladesh with the help of Japanese government will help to improve the capacities of the peacekeepers in the coming days.

Lastly, since the end of the Cold War, on many occasions there was unprecedented consensus in the UNSC. But, in recent times, Russia and China are critical about the US positions in the Security Council. In the coming days, reaching a consensus on the activities of peace operations may not be always easy for the members of the UNSC. The recent Chinese presence in Africa, where most of the UN peacekeeping forces are deployed, is not seen by France positively.26 Nowadays, peacekeeping is a

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part of global geopolitics. Hence, it may be a challenge for Bangladesh to maintain a position, where all the Security Council members feel convenient to deploy Bangladeshi peacekeepers. Bangladesh needs to adopt effective diplomatic policies to maintain a neutral, but a cordial relation with all international actors. The image that Bangladesh already has achieved would make it easier for the country to convince international community that the objective of Bangladesh is to work for the betterment of humanity to achieve peace and stability. In addition, the commitment of Bangladesh to achieve global peace needs to be raised in the international fora effectively.

5. Conclusion

The UN is the global institution to negotiate among the hostile groups and to resolve international conflicts. At the beginning, the UN peace operations were mainly concentrated on mediation and negotiation to prevent escalation of conflicts. The doctrine of New Horizon peacekeeping, which is going to determine future of the UN peace operations, is more robust and multidimensional than before.

As a significant contributor in the UN peacekeeping activities, Bangladesh needs to understand its challenges and to prepare to respond effectively in the new era of peace operations. The responses would include, adaptation with the emerging doctrinal shifts, adopting efficient diplomatic instruments to justify the country’s contribution in the global affairs and facing new threats in the field level operations i.e., dealing with NSAs, activities relating to DDR and monitoring ceasefire in the conflicting areas. Moreover, the capacity building to handle peace building affairs, like contributions in the process of democratisation, institutionalisation and arranging peaceful elections, would be a challenge for Bangladesh. The use of modern technology and language skill for the mission areas are also necessary for efficient functioning of peace operations.

Bangladesh takes pride in few sectors and peacekeeping is one of those. The previous records of Bangladesh show that its peacekeepers are keen to adapt with new challenges efficiently. The earlier commitments and dedications substantiate that Bangladesh certainly would be able to respond properly for adjusting with the new issues of peace operations. To ensure the country’s respectable position in the planning and strategic levels of the UN peacekeeping activities, the country needs to be more active in the international fora. To secure good image of Bangladesh achieved due to its contributions in the UN peacekeeping, it needs a planned and comprehensive training and motivation for its peacekeepers to deal with the emerging issues of peace operations. Last but not least, the motto of the peacekeepers of Bangladesh would be to win hearts and minds of the people of areas where they are deployed. It would increase the acceptance of Bangladeshi peacekeepers and would enhance the image of the country in the international fora.

Mahfuz Kabir

REGIONAL TRADE LIBERALISATION AND NON-TARIFF BARRIERS: THE CASE OF BANGLADESH’S TRADE WITH SOUTH ASIA

Abstract

Although trade liberalisation measures are in place for eight years, intra-regional trade in South Asia has been meagre and is not encouraging at all as Bangladesh’s export market in the region. India also granted duty free quota free access to almost all traded Bangladeshi products, which is also not showing significant increase in Bangladesh’s export to reduce the country’s mounting trade deficit with India. Therefore, overwhelming presence of non-tariff barriers has been perceived to be resulted in intra-regional trade significantly lower than expected. Given this context, the paper tries to identify the non-tariff barriers in South Asia in the context of Bangladesh’s export expansion in this region. It takes a few product-specific cases in both export and import of Bangladesh to examine the barriers prevailing in neighbouring countries, viz. India, Nepal and Bhutan. The paper reveals that such barriers are related to bonded warehouse, gate pass, shipment and customs, infrastructure in land customs stations, visa, speed money, and excessive checking, which have been suggested to constrain expected gains from regional trade liberalisation measures. The paper argues that India’s countervailing duty on garments import has not impacted negatively on Bangladesh’s exports, but there is scope for further improvement if the duty is set equally for Indian and foreign manufacturers.

1. Introduction

In the current fiscal year (2013-14), Bangladesh’s export to South Asia is going to witness significant fall. The same is going to happen in case of Bangladesh’s export to India, the biggest market of the country’s exports in South Asia. The growth of Bangladesh’s exports to India and South Asia is also not encouraging in the last half a decade despite major initiatives for freeing trade in the region through executing South Asian Free Trade Area (SAFTA) and India’s Duty Free Quota Free (DFQF) access to nearly all traded products excluding some items having public health concerns. Why is the intra-regional trade in South Asia not flourishing despite these measures? Or more specifically, Bangladesh’s export to India is not increasing significantly even though Indian market is almost open to Bangladeshi products. The educated guess
and the most pronounced response is the presence of myriad non-tariff measures (NTMs) and barriers (NTBs).

Despite being integral parts of economic integration schemes and more specifically free trade agreements in both developed and developing worlds, the NTMs and NTBs are perceived to be significant restraints to trade flows. Efficiency of trading systems hinges critically on whether and how the trading partners address different barriers, viz. tariff, para-tariff and non-tariff ones. While tariffs are being reduced across the world, it is being increasingly realised that NTBs are hampering cross-border trade significantly especially when the trade potential remains high. Most of trade costs are believed to be explained by NTBs, many of which are due to procedural reasons. Overwhelming presence of these barriers have been perceived to account for significantly lower than expected intra-regional trade despite SAFTA being in place since mid-2006. Recent studies reveal that a range of NTBs, especially procedural, has been responsible for triggering costs of doing cross-border trade. Unfortunately, these remain to be not addressed adequately by policy-makers across the borders. A recent study indicates a considerable ‘static’ loss of consumer welfare due to non-cooperation in trade within South Asia due to sensitive list maintained by SATFA, which is estimated to be US$ 1.95 billion or 31.36 per cent of current value of imports of these items from outside the region.

Given this context, the objective of the paper is to identify and analyse the NTBs that are prevalent in general in South Asian countries along with their nature, depth and extent. A product-specific case has been analysed to more vividly comprehend the effects of NTBs on Bangladesh’s external trade with South Asian countries. In doing so, an import and export item has been taken through secondary analysis and primary investigation among business association leaders and other key stakeholders. In-depth interviewees were from higher officials of Federation of Bangladesh Chambers of Commerce and Industry (FBCCI), India-Bangladesh Chamber of Commerce and Industry (IBCCI), PRAN Group and Phoenix Group, and selected trade experts in Bangladesh. The purpose of this exercise is to bring out the views and concerns of the business community and other stakeholders about NTBs affecting cross-border trade and to suggest policy recommendations for the removal of such NTBs. The paper intends to understand the NTBs in two products — one on imports and the other on exports—in the context of Bangladesh’s trade with South Asian countries. Understandably, the items are cheaper if traded within South Asia compared to importing from rest of the world and for that matter indicating loss of consumer welfare due to relatively low trading from within the region. The contributions of the paper are mainly twofold. First, it provides an analytical insight of the nature and extent of product-specific NTBs in Bangladesh’s trade in South Asia along with its impacts, which is currently missing in the existing literature. Second, it draws some concrete lessons which can be readily addressed by the regional policy-

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makers to foster regional trade without substantive reform in the existing trading regime.

The paper has been organised as follows. Section 2 provides an overview of NTBs in South Asian countries with an analysis of their possible effects on Bangladesh’s exports to South Asia. Section 3 discusses the product-specific exports of Bangladesh in South Asian countries and reveals NTBs in entering the markets of India, Nepal and Bhutan from Bangladesh perspective. Section 4 explains the product-specific imports of Bangladesh from South Asia and identifies the NTBs. Based on the analyses, Section 5 briefly examines whether India’s NTBs in general and countervailing duty on RMGs act as a significant barriers to export. Finally, concluding remarks with some tentative recommendations have been made in Section 6.

2. An Overview of NTBs in South Asia

The use of NTMs and NTBs has given rise to significant debate in the international trade discourse after notable reduction in tariff use under the World Trade Organization (WTO) rules. The SAARC members are mostly developing countries and Least Developed Countries (LDCs). Though the import tariffs of the countries in the region have been significantly reduced in the recent past, the use of various NTMs and NTBs are increasing as a result of opening trade regimes (e.g., due to WTO and SAFTA). In the early years of South Asian Association for Regional Cooperation (SAARC), the popular perception was that high customs duty was leading to low intra-regional trade. High customs duties were reduced significantly over time due to increased international trade, implementation of WTO rules and SAFTA. Despite significant reduction in customs duty in the region, the intra-SAARC trade is still hovering at a meagre 5 per cent of the region’s world trade. Fingers are now pointed to the NTBs. Indeed, the NTBs are quite high in South Asia and the SAFTA Agreement had not adequately addressed this issue.

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2 The study tried to cover product-specific NTBs in all countries of South Asia for Bangladesh’s trade but found data of Bhutan, India, Nepal, Maldives, Pakistan and Sri Lanka. However, among these countries the notable NTBs were found in the first three countries in trade of selected items as reported by the interviewees.


Table 1: Bangladesh’s Trade with South Asia, 2012-13 (million US$)

<table>
<thead>
<tr>
<th>Country</th>
<th>Exports</th>
<th>% of Exports to World</th>
<th>Imports</th>
<th>% of Imports from World</th>
<th>Total</th>
<th>% of Trade with World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>3.57</td>
<td>0.01</td>
<td>2.41</td>
<td>0.01</td>
<td>5.98</td>
<td>0.01</td>
</tr>
<tr>
<td>Bhutan</td>
<td>1.82</td>
<td>0.01</td>
<td>25.34</td>
<td>0.07</td>
<td>27.16</td>
<td>0.04</td>
</tr>
<tr>
<td>India</td>
<td>563.96</td>
<td>2.09</td>
<td>4,907.89</td>
<td>14.01</td>
<td>5,471.85</td>
<td>8.83</td>
</tr>
<tr>
<td>Maldives</td>
<td>1.53</td>
<td>0.01</td>
<td>0.67</td>
<td>0.00</td>
<td>2.2</td>
<td>0.00</td>
</tr>
<tr>
<td>Nepal</td>
<td>26.41</td>
<td>0.10</td>
<td>37.01</td>
<td>0.11</td>
<td>63.42</td>
<td>0.10</td>
</tr>
<tr>
<td>Pakistan</td>
<td>68.70</td>
<td>0.26</td>
<td>503.55</td>
<td>1.44</td>
<td>572.25</td>
<td>0.92</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>23.69</td>
<td>0.09</td>
<td>40.93</td>
<td>0.12</td>
<td>64.62</td>
<td>0.10</td>
</tr>
<tr>
<td>South Asia</td>
<td>689.68</td>
<td>2.56</td>
<td>5,517.8</td>
<td>15.75</td>
<td>6,207.48</td>
<td>10.02</td>
</tr>
<tr>
<td>Rest of the World</td>
<td>26,236.05</td>
<td>97.44</td>
<td>29,507.34</td>
<td>84.25</td>
<td>55,743.39</td>
<td>89.98</td>
</tr>
<tr>
<td>Bangladesh’s World Trade</td>
<td>26,925.73</td>
<td>100.00</td>
<td>35,025.14</td>
<td>100.00</td>
<td>61,950.87</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Statistics Department, Bangladesh Bank and Export Promotion Bureau of Bangladesh.

Table 1 describes Bangladesh’s trade with South Asian countries, which reveals that the country suffers from huge trade deficit with South Asia. However, the country enjoys small trade surplus with only Afghanistan and Maldives, even though the amount of trade is quite meagre. Table 2 reveals that export to South Asia had been increasing up to FY 2012-13, while in 2013-14, the estimated export to South Asia decreased significantly but increased to rest of the world.

Table 2: Trend of Bangladesh’s Exports to South Asia (million US$)

<table>
<thead>
<tr>
<th>Country</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>2.74</td>
<td>3.53</td>
<td>3.59</td>
<td>3.57</td>
<td>3.55</td>
</tr>
<tr>
<td>Bhutan</td>
<td>2.24</td>
<td>3.12</td>
<td>9.13</td>
<td>1.82</td>
<td>1.87</td>
</tr>
<tr>
<td>India</td>
<td>304.63</td>
<td>512.51</td>
<td>498.42</td>
<td>563.96</td>
<td>432.90</td>
</tr>
<tr>
<td>Maldives</td>
<td>0.74</td>
<td>0.93</td>
<td>1.78</td>
<td>1.53</td>
<td>1.66</td>
</tr>
<tr>
<td>Nepal</td>
<td>8.79</td>
<td>10.84</td>
<td>41.58</td>
<td>26.41</td>
<td>11.05</td>
</tr>
<tr>
<td>Pakistan</td>
<td>77.67</td>
<td>86.79</td>
<td>73.21</td>
<td>68.70</td>
<td>56.88</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>23.73</td>
<td>34.73</td>
<td>42.59</td>
<td>23.69</td>
<td>27.27</td>
</tr>
<tr>
<td>South Asia</td>
<td>420.54</td>
<td>652.45</td>
<td>670.30</td>
<td>689.68</td>
<td>535.17</td>
</tr>
<tr>
<td>Rest of the World</td>
<td>15,751.52</td>
<td>22,230.46</td>
<td>23,540.40</td>
<td>26,236.05</td>
<td>29,214.60</td>
</tr>
</tbody>
</table>

*Projection based on July 2013-May 2014 data.

Figure 1 shows a trend of proportional change in export to South Asia and rest of the world. It reveals that in Fiscal Year (FY) 2010-11, the export to rest of the world witnessed magnificent growth while the growth reduced to only about 5 per cent in the following year. It reveals about 11 per cent change since 2012-13. On the other hand, despite DFQF access to Indian market and SAFTA, total export to South
Asia shows a generally declining trend during this period. In 2013-14, the change was 22.5 per cent after about 3 per cent change in the last two years. It implies that customs tariff elimination is necessary but not sufficient in boosting trade if NTBs are prevalent and influential.

Figure 1: Changes of Bangladesh’s Exports (%) 5

In terms of impact on trade flow, the NTBs are broadly categorised into two: important and relatively unimportant. While the examples of important ones are quotas, voluntary export restraints, non-automatic import authorisations and variable import levies, relatively unimportant NTBs are cited to be packaging and labelling requirements. Table 3 provides a latest inventory of major NTBs — general and specific — prevailing in South Asian countries.

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5Author’s calculation based on the data of Export Promotion Bureau of Bangladesh.
### Table 3: Country-Specific NTBs in SAARC

<table>
<thead>
<tr>
<th>Country</th>
<th>NTBs</th>
</tr>
</thead>
</table>
| Afghanistan  | ▪ Some temporary geographic prohibitions on imports of many products, mostly food items from specific countries on SPS grounds, such as, nuclear radiation, mad-cow disease, etc.  
              ▪ Several long forms need to be filled up for external trade related transactions, e.g., customs clearance.                                                                                       
              ▪ Financial fees and charges are involved for licensing, often in form of post-transaction levies and royalty at pro-rata basis on the invoice price.                                               
              ▪ Mandatory bank guarantee covering part or all of the duties and taxes on the truck carrying Afghan goods passing through Pakistan territory.                                                          |
| Bangladesh   | ▪ Imports of a number of products are subject to quality standards.                                                                                                                                     
              ▪ Imports of all food items are subject to radioactivity test reports by Bangladesh Atomic Energy Commission.                                                                                           
              ▪ Supplementary and regulatory duties on a number of products (para-tariffs).                                                                                                                     
              ▪ Restricted port of entry and exit (land port) and complex customs clearance procedures.                                                                                                           
              ▪ Pre-registration is required for import of selected sensitive products, such as iron scrap, used vehicles, etc.                                                                                     
              ▪ Packaging, labelling, certifications, and conformity assessments, etc. (TBT) under UNCTAD classification (Category B) for 218 product categories.                                               
              ▪ Varying standards and procedural steps (e.g., non-acceptance of quality certificates).                                                                                                           |
| Bhutan       | ▪ Import license for all consignments originating from countries entering Bhutan by road through India (transit).                                                                                         
              ▪ An importer (other than importers generating foreign exchange) can import a certain product from any country except India, up to a maximum 4 containers a year (Quantitative Restrictions).       
              ▪ Restricted import of used clothes and textile items.                                                                                                                                                
              ▪ Temporary restriction on import of motor vehicles, furniture and alcohol.                                                                                                                          
              ▪ Import of raw materials for industrial use must have a minimum 40% of value addition.                                                                                                               |

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6 S. Raihan *et al.* (2014), *op. cit.*
<table>
<thead>
<tr>
<th>Country</th>
<th>Restrictions</th>
</tr>
</thead>
</table>
| India | - 428 products at 8 digit HS code level cannot be imported without license.  
- Import prohibition on 52 HS lines, in addition to 33 other products that are allowed to be imported only by State Trading Enterprise.  
- Prohibited import of beef in any form and import of products containing beef in any form.  
- Import of Genetically Modified (GM) food, feed, Organism (GMOs) and Living Modified Organisms (LMOs) or any product containing any of these is subject to several certifications, and other TBT measures.  
- 74 products subject to mandatory compliance of Bureau of Indian Standards.  
- State-level para-tariffs (tax, fee, education and higher education cess, duty, etc.)  
- Health and sanitary regulations (quarantine fees).  
- Restricted ports of entry and inland customs ports.  
- Anti-dumping and countervailing duties, and safeguard measures. |
| Maldives | - Licensing for all imports.  
- State Trading Organisation is the main government-controlled entity in imports. |
| Nepal | - Six categories of products (i.e., selected narcotics, beef, plastic materials, etc.) banned for import on religious, public health, and environmental grounds.  
- Separate licenses required to import, sell or store excisable goods.  
- Para-tariffs (environment tax) on imported petroleum products. |
| Pakistan | - 13 categories of live animals, birds, books, and some other products are banned for imports on health, safety, and religious or moral reasons.  
- 44 other industrial products banned for imports for economic and/or protective reasons.  
- Nine broad categories of used machinery and equipment banned for imports.  
- 56 categories of items, including some animal and plant products restricted for import.  
- Imports of a number of products are subject to quality standards and regulatory duty.  
- Anti-dumping duty.  
- Packaging, labelling, certifications, and conformity assessments, or other restrictions (TBT).  
- Varying standards and procedural steps. |
The above table reveals that NTBs include both important and unimportant trade barriers that include quality standard, license, para-tariff, labelling, anti-dumping duty, and arbitrary imposition of requirement that vary over time. There are some country-specific more prevalent NTBs that are applied to protect the interest of domestic business and achieve political objectives of the individual countries rather than promoting consumer interest through maximising economic welfare. In the available studies the generally prevailed non-tariff measures are: Sanitary and Phytosanitary (SPS) measures, Technical Barriers to Trade (TBT), quotas, anti-dumping measures, license requirements, and countervailing measures, customs regulations, and environmental measures, barriers to cross the border, labelling requirements, rules of origin, visa requirement and lack of infrastructure and connectivity.\(^7\)

Thus, strong presence of NTBs is one of the major obstacles to promote SAFTA for increasing intra-regional trade. Besides the NTBs directed at India by Pakistan, the NTBs in the region prevails in the forms of tariff rate quotas, restricted ports of entry, import bans, and the excessive use of health and SPS measures. The use of NTBs is justified by India under General Agreement on Tariffs and Trade (GATT) Article XVII-2(b). Bangladesh has complaints against India that include high documentation requirements, varying methods of assessing duties, expensive mandatory certificates on technical and health standards that need to be collected from distant locations such as Kolkata and Delhi, non-recognition of Bangladeshi certification and testing laboratories, etc. A major impediment towards growth of intra-SAARC trade is India’s NTBs which include \textit{ad hoc} change of policies regarding various tariff quotas, limited number of designated ports of entry and administrative procedures.

The knowledge of NTBs is rather sparse and is hampered by the lack of common definitions and methodologies, inadequate quantity and quality of data, and ways and means of quantifying impacts on trade. SPS certifications and laboratory testing results are not universally recognised among SAARC members. Health and

safety standards and regulations are often applied in a discriminatory manner and supporting scientific evidence is often not available to justify the imposition of SPS.8

Procedural complexities frequently turn out to be deterrents to Bangladesh-India trade.9 Despite some improvements in terms of customs automation, the customs offices in Northeast India (NES) still necessitate excessive documentation, especially for imports. Documents are required to be submitted in paper (hard copy). As high as 330 signatures on 17 documents are required at several stages for an Indian exporter who intends to export to Bangladesh.10 The two governments are alleged to increase the degree of difficulty in bilateral trade by adding avoidable requirements even though majority of these documents are standard for international trade. To address the problems and to stop recurrent problems and anomalies, the bureaucracy introduced new procedures and documents, which in turn considerably increased the cost of doing business without or having meagre effect on the origin of difficulties. Due to the long-standing complex, sluggish and archaic procedure in the official side, the loss of economic gain tends to increase, which also leads to altering the composition and direction of trade in eastern South Asia.11 After completing all the procedures, time taken in different stages of consignment from origin to destination is considered to be a notable NTB.12

Article 1 of SAFTA defines NTBs broadly to include ‘any measure, regulation, or practice, other than tariffs.’ The articles 7.4 and 7.5 cover all possible restrictions including quantitative restrictions, which can vary in terms of their nature, purposes and the manner of using the barriers.13 The most significant difficulty is to come to terms with what constitutes restrictions and measures of genuine welfare. Under Article 7.4, the member countries agree to notify the SAARC Secretariat of all non-tariff and para-tariff measures to their trade on an annual basis, which will be reviewed by the Committee of Experts (CoE) to examine their compatibility with relevant WTO provisions and recommend the elimination or implementation of the measures in the least trade restrictive manner. However, there is no binding commitment for countries within the terms of SAFTA to eliminate NTBs.14 Many NTBs are outcome of inefficient institutional structures.

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8 ADB and FICCI, Key Proposals for Harnessing Business Opportunities in South Asia, Manila: ADB, 2010.
12 Please see the Appendix.
13 There are instances of such barriers in Pakistan, India, Nepal and Bhutan. Some of them are explained in Sections 3 and 4 in the case of Bangladesh’s product-specific trade.
3. Opportunities in Exports and NTBs

To understand the NTBs in the exports case, the paper focuses on food products of some certain categories, mostly fruit juice and confectionary items that are being exported to South Asian countries with majority to India in considerable volume. The export figure of those items in the just concluded fiscal year 2012-13 has been given in Table 4.

<table>
<thead>
<tr>
<th>HS Code</th>
<th>Product Description</th>
<th>Bhutan</th>
<th>India</th>
<th>Nepal</th>
<th>Pakistan</th>
<th>Rest of the World</th>
</tr>
</thead>
<tbody>
<tr>
<td>170410</td>
<td>Chewing gum containing sugar, except medicinal</td>
<td>36,111</td>
<td>221,082</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>170490</td>
<td>Sugar confectionery nes (including white chocolate), not containing cocoa</td>
<td>2,304,103</td>
<td>473,586</td>
<td>255,303</td>
<td>433,320 (12.5)</td>
<td></td>
</tr>
<tr>
<td>200799</td>
<td>Jams, fruit jellies, fruit/nut purée &amp; paste, ckd prep, sugared, sweetened/not</td>
<td>70,781</td>
<td>16,893</td>
<td>85,287 (49.3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>200919</td>
<td>Orange juice &amp; nes, unfermented not spirited, whether or not sugared or sweet</td>
<td>594,478</td>
<td>2,609,699</td>
<td></td>
<td>21,015 (0.65)</td>
<td></td>
</tr>
<tr>
<td>200931</td>
<td>Single citrus fruit juice, unfermented, Brix value &lt;= 20 at 20°C</td>
<td></td>
<td>44,763</td>
<td>2,020,203 (97.8)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>200990</td>
<td>Mixtures of juices unfermented—spirited whether or not sugared of sweet</td>
<td></td>
<td>27,623</td>
<td>227,996 (89.2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>594,478</td>
<td>5,020,694</td>
<td>783,947</td>
<td>255,303</td>
<td>2,787,821</td>
</tr>
</tbody>
</table>

Source: Export Promotion Bureau of Bangladesh.

As Table 4 reveals, Bangladesh exports US$ 6.65 million of these three food items to South Asia and US$ 2.79 million to rest of the world. Of this volume, US$ 5.02 million has been exported to India in three items, which was 53.2 per cent of the total exports of these items to the world and exports to other countries of South Asia was 17.3 per cent. After that, Nepal and Bhutan are the most important destinations of these items with 8.3 and 6.3 per cent of the export share, respectively. Given overarching position in South Asia in terms of the volume of export, the business community in Bangladesh perceives that the export potential is much higher than current actual export, but tapping the potential is subject to a number of NTBs.
3.1 Exports to India

Bangladesh has the biggest stake in bilateral trade with India in terms of trade volume. However, there is a number of pressing NTBs that are hampering exports to India as reported by the interviewees. Some of the critical NTBs imposed by Indian side in the case of Bangladesh’s exports are listed below.

3.1.1 Bonded Warehouse and Related Rules

Recently, customs authorities of North East Indian (NEI) states promulgated a new rule, i.e., all importers must have a ‘bonded warehouse’ collocated to the land port where they will have to keep their imported goods under lock and key until they get the health certificate of those goods. Processed food exporters find it hard to access in NEI market. The Office of the Commissioner of Customs (Preventive) of NEI made the storage of nonperishable food items in bonded warehouses mandatory from 1 June 2010. The Indian importers have to keep imports in these warehouses until laboratory tests on shipments are completed. However, test results from Indian laboratories are normally delayed, which increase the cost of doing business and thus erode competitiveness of Bangladeshi food items in Northeast India. More specifically, exports of food items through Akhaura-Agartala and Tamabil-Dawki borders reduced due to this rule.¹⁵

To take a bonded warehouse, the importer needs a ‘Bank Solvency Certificate’ of Rs.5 million.¹⁶ This is a huge amount for an importer. S/he needs to mortgage a big portion of her/his property to get the certificate. Thus, many of the importers are discouraged to do business. For this bonded warehouse, the importers need to pay extra rent, thus the expenses of the importers are increased. This is also hampering the profit and discouraging to continue business.

Previously, the exported goods used to be unloaded in the land port (Indian part) from the exporter’s (PRAN) transport, were loaded in the importers’ transport and were taken to the importer’s warehouse. Now the goods are unloaded in the land port (Indian part) from the exporter’s (PRAN) transport, loaded in the importer’s transport and then taken to the bonded warehouse.¹⁷

Laboratory testing is required for all products. Bio-security and SPS requirements are involved for import permit in which risk analysis of the products is complex.¹⁸ However, after getting the ‘Health Report’, the goods are again taken to the importers’ warehouse. Thus, the transport and labour costs become double.

¹⁵ For details, see, “Food exports to India hit a rough patch”, The Daily Star, Dhaka, 15 August 2010.
¹⁷ The same predicaments are reported in “Slow Delivery of Goods at Agartala Worries Exporters”, The New Age, Dhaka, 11 June 2012.
As per the decision of customs authority, the bonded warehouse should be located within the perimeter of the land customs station area. At present, the import volume of the PRAN importers increased a lot and the existing bonded warehouses are not sufficient to accommodate the imported goods. Again, at present there is no additional infrastructure on any warehouse collocated to the land customs area which can be rented by the importer and can be made bonded for their use. Therefore, the import volume is being hampered in ratio to potential and the Indian government is losing the import revenue as well.

### 3.1.2 Car Pass

At present a system of ‘Car Pass’/‘Gate Pass’ is practiced in Agartala, Changrabandha and Benapole land ports. Bangladeshi customs authority issues ‘Gate Pass’ to the Bangladesh vehicles which carry exported goods. Based on the ‘Gate Pass’, Indian customs authority allows the Bangladesh vehicles to enter the Indian part and go up to maximum of ten yards to unload the goods. But this pass is not allowed in other land ports. Neither Bangladeshi customs issue the ‘Gate Pass’ in some ports, nor Indian customs honour the ‘Gate Pass’ and allow the Bangladeshi vehicles to enter into Indian side. Therefore, the vehicles are compelled to unload goods in the ‘No Man’s Land’. The issue was, however, discussed in India-Bangladesh Joint Trade Customs Meeting in Dhaka on 21-22 October 2013 to introduce ‘car pass’ system for the truck drivers at land customs stations, but progress was not made.20

### 3.1.3 Shipment and Customs

There are shipment related problems recently being faced by the traders at Agartala Port. If the Customs Super of Agartala port remains absent for any reason or goes on leave, that day (those days) the customs does not receive the shipments of food items from Bangladesh side. Moreover, if all the trucks of a particular shipment cannot be sent in a serial, the customs authority does not receive the shipment and returns Bangladeshi trucks. Sometimes, it may happen that one or two trucks are delayed to reach the port due to some mechanical problems on the road.21 But this is not considered by the Agartala port authority.

Customs office at Indian side remains open from 9 am to 5 pm. Before and after this time, they do not give clearance to entry or exit of any truck. Customs Appellate Office (CAO) is located at Shillong. If any dispute arises at the port requiring the interference or approval of the CAO, it becomes time consuming.

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19 However, it is not mandatory under India’s Customs Act, 1962. Thus, it can be termed as an NTM because it is perhaps imposed arbitrarily by the Indian authority to restrain import.


3.1.4 **Infrastructure**

Inadequate infrastructure facilities such as warehouse, transshipment yard, parking yard and connecting roads at land customs stations also hinder exports from Bangladesh. No shed is available on either side of the border in land ports for loading and unloading of products. This causes damage to products during rainy season.22

The NTBs restraining Bangladesh’s market access to India, especially the Northeastern States, are documented and well-pronounced as it is a natural captured market for Bangladeshi food and other necessary items. However, the barriers to access the other South Asian markets are not cited prominently.

The sub-sections 3.2 and 3.3 try to portray some of the recent NTBs of Nepal and Bhutan as these countries import considerable processed food items from Bangladesh (see Table 4).

3.2 **Exports to Nepal**

The business community reported that the export potential of the selected food items to Nepal is triple of the actual volume. Majority of exported items to Nepal are drinks (both fruit and non-fruit), confectionary items, snacks, toast, jam-jelly-chutney, etc. The basic duty of food products coming from Bangladesh is very high, which is 30 per cent as Bangladesh is not enjoying the SAFTA facilities in Nepal for these items. Nepal included Bangladeshi food products on the ‘sensitive list,’ which restricts duty free entry of these products in Nepal. This hinders Bangladeshi food products to compete in Nepal with other foreign products.

3.3 **Exports to Bhutan**

Similar to the case of Nepal, the interviewed businesspersons reported that the major exported items to Bhutan are juice (both fruit and nonfruit), confectionary items, snacks, toast, etc. with two-fold potential than the actual exports. The exported products of Bangladesh had duty free access to Bhutan. They only used to take the Bhutan Sales Tax (BST) for their imported items. The amount of tax was 30 per cent for product of up to 250 gm for 15 per cent above 250 gm. However, the country currently maintains a heavily restrictive barrier through introducing 50 per cent basic duty on the juice items for which it has become very difficult for the Bhutanese importers to import these items from Bangladesh. More specifically, an agreement was signed between the Commerce Ministers of Bangladesh and Bhutan in 2009, under which Bhutanese government was allowing to import the juice items under the H.S. Code 2009.31, which was duty free. But recently, they are now allowing the import of mango and litchi juice under that H.S. Code. They are referring separate H.S.

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Code which falls under 50 per cent basic duty. Conversely, India is getting duty free access for its juice items, which is the main competitor of Bangladesh for these items.

On the other note, it was opined that the physical infrastructure, especially road condition, on the other side of the border is very poor. It seriously inhibits the desired commodity flow from Bangladesh to Bhutan. Sometimes, the Indian authority does not cooperate with Bhutanese importers to carry products from Bangladesh through its land.

4. Opportunities in Imports and NTBs

The paper focuses on the ‘iron and steel’ and ‘articles of iron and steel’ to be the items for understanding the impact of NTBs on imports from South Asia. These items are considered to be important for promoting industrial development, especially manufacturing sector and supporting construction sector that demonstrated high growth of Bangladesh in the recent years.

<table>
<thead>
<tr>
<th>HS Code</th>
<th>Product</th>
<th>Bhutan</th>
<th>India</th>
<th>Maldives</th>
<th>Pakistan</th>
<th>Sri Lanka</th>
<th>Rest of the World</th>
<th>Total import</th>
</tr>
</thead>
<tbody>
<tr>
<td>72</td>
<td>Iron and Steel</td>
<td>0.654</td>
<td>135.114</td>
<td>0.251</td>
<td>0.071</td>
<td>1,420.582</td>
<td>1,556.672</td>
<td></td>
</tr>
<tr>
<td>73</td>
<td>Articles of Iron</td>
<td>25.999</td>
<td>0.096</td>
<td>0.478</td>
<td>109.245</td>
<td>135.818</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Steel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>0.654</td>
<td>161.113</td>
<td>0.251</td>
<td>0.167</td>
<td>1,529.827</td>
<td>1,692.490</td>
<td></td>
</tr>
</tbody>
</table>

Source: Bangladesh Bank (2013).

If the country’s volume of imports of these items from the world is considered, South Asia as the source plays insignificant role. As revealed from Table 5, Bangladesh imported as high as 90.4 per cent of these products from beyond South Asia in fiscal year 2011-12, and within this region the sources were six SAARC countries except Nepal. However, India supplies the majority — 9.5 per cent of imports while the other countries jointly supply only 0.1 per cent. The country is also an important destination of Bangladesh’s exports of these two items even though there is a considerable trade deficit disfavouring Bangladesh.
The net export of Bangladesh in bilateral comparison with India was negative, which can be seen from Table 6. The import of iron and steel in 2011-12 from rest of the world was 91.26 per cent. But the trade facilitation within the SAARC region can save import-export execution cost. The creation of trade bloc within the SAARC region will benefit other SAARC nations along with India.

Considering the dominant position of India as a source country and its export to the world market of US$ 6,996.228 million imply that the volume of imports of US$ 1,355 million from outside South Asia in 2010-11 could be easily met by India, thus, reducing costs (both explicit and implicit) due to its locational advantage. A trade potential of US$ 936 million could be realised by effectively improving trade ties between the two countries.23

The trade potential could not be realised due to a number of NTBs as mentioned by the interviewed importers, which are described below. A summary of specific import related NTBs has also been listed in Table 7.

- **Infrastructural deficiency:** The most obvious problem is poor and insufficient infrastructure at ports, connecting roads, inadequate place which creates a long queue of vehicles, limited number of bonded warehouses and storages.24 The roads are not capable enough of bearing 20 tones trucks. Loading and unloading problems often cause damage to imported goods. The businessmen are bound to pay extra money and extra hour to the loading-unloading workers at port who do not take any responsibility if the goods are damaged. There is scarcity of instruments for unloading. To unload products from ships to land, extra platform is needed as rivers are not deep enough for the ships to catch land.

- **Business visa:** To get a business visa for India, businessmen often do not get enough time to fill the application forms online and because of huge application forms, sometimes the server do not work properly. After this when they

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could make time and fill the 4-5 pages form out, they cannot find the visa interview dates, which could only be found at mid-night and after 15 days of submitting application forms. Also, sometimes they are not granted visa that restrains attending important business meetings in India. The problem of getting visa has intensified in the recent days.

- **Financing:** The financial barriers regarding getting loans from banks are enormous. In some cases, it has been seen that banks often provide loans to big businessmen rather than the smaller ones. For the new businessmen, banks demand 200-300 per cent collateral. The interest rate is almost 18 per cent for industrial loan, which is very high compared to business abroad.

- **Hurdles at the ports:** When the products reach at port in Indian part, there are several problems to get those such as having speed money for the officers, bureaucratic problems and safety measures including harassment. When the consignment reaches at Bangladeshi port, the main issue is rampant speed money and it is a necessary condition to release the product in time. The other problem is the requirement of extra papers by the port authority.

- **Other issues:** To get a testing certificate from Bangladesh Standard Testing Institute (BSTI), sometimes they do not have proper instrument to test and their standard is not recognised internationally. There are bureaucratic problems in terms of documentation, submitting extra papers and visiting more than one office to obtain clearance certificates and others. The interviewees also reported that sometimes visiting Bangladeshi businessmen are harassed by the security agency officials of India, which discourages them in trading with their Indian counterparts.

### Table 7: List of NTBs Indicated by Importers

<table>
<thead>
<tr>
<th>Steps</th>
<th>NTBs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Visa</td>
<td>- Extremely cumbersome application procedure. Sometimes visa is not granted</td>
</tr>
<tr>
<td>Step 2: Testing and certificate</td>
<td>- Considerable time required and hassles involved</td>
</tr>
<tr>
<td>Step 3: Bureaucratic complications</td>
<td>- Excessive documentation</td>
</tr>
<tr>
<td></td>
<td>- Additional paper requirements</td>
</tr>
<tr>
<td></td>
<td>- Many offices to travel</td>
</tr>
<tr>
<td>Step 4: Barriers erected by Indian customs officials after the goods have reached at land port</td>
<td>- Bribe</td>
</tr>
<tr>
<td></td>
<td>- Bureaucratic complications</td>
</tr>
<tr>
<td></td>
<td>- Security measures: search/harassment</td>
</tr>
</tbody>
</table>

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Step 5: Barriers erected by customs official of Bangladesh after the goods have reached the port
- Bribing
- Document requirement
- Customs complication
- Wastage of time

Step 6: Port infrastructure and other barriers from Bangladesh side
- Connecting road
- Inadequacy of space/long queue of vehicles
- Loading/unloading problem
- Lack of availability of space and additional charge of vehicles
- Crisis of bonded warehouse/storage

Step 7: Barriers of financial institutions from Bangladesh side
- Excessive documents required
- High interest rate, mortgage rate as high as 200-300 per cent

Step 8: Other NTBs from Bangladesh side
- Security measures: search/harassment

Source: Compiled from interviews by the author.

5. India’s NTBs as Barriers to Export: Countervailing Duty on RMGs

As mentioned earlier, India has granted DFQF access to 46 textile tariff line items from Bangladesh, which were highly sensitive as notified on 6 September 2011 during the then Indian Prime Minister Manmohan Singh’s visit to Bangladesh. Later, on 9 November 2011, India granted DFQF access to all export items (except for tobacco and alcohol due to public health concern) of LDC members of SAARC that includes Bangladesh. It created an air of confidence among Bangladeshi exporters who faced unfavourable treatment in Indian market as its customs tariff was traditionally believed to be responsible for mounting trade deficit with India.

It is, however, argued that Bangladesh could not get advantage of DFQF market access due to, among others, infrastructure bottlenecks, inadequate customs and port facilities, and cumbersome export procedure and documentation required. The country also needs diversifying export basket to India. Though the total volume of export increased compared to the period before DFQF access with annual fluctuations, it declined proportionately.26

Shortly after granting DFQF, India imposed Countervailing Duty (CVD, an NTM) of 12.36 per cent on imports of Readymade Garments (RMGs) in FY2012-13 (starting from April 2012) for providing national treatment to exports from Bangladesh to India to create ‘level playing field’ for domestic and imported items.27 However, countervailing duty is usually imposed on Indian manufacturers instead of excise duty. Now, since India imposes 6 per cent excise duty to branded readymade garments made of cotton, not containing any other textile materials, for Indian

26 Dhaka Tribune, Dhaka, 23 April 2014.
27 “Bangladesh to seek removal of CVD on RMG, dev of Indian land ports”; op. cit.
manufacturers, it should also be applicable to imported RMGs to create a real level playing field.28

It was popularly claimed, especially from Indian side, that DFQF access would increase Bangladesh export to India significantly in FY2010-11 from FY2009-10, and from half a billion of FY2010-11, the exports would be simply double. Now, let us see whether the DFQF access to Indian market has really impacted significantly on Bangladesh’s exports in the presence of NTBs. Table 8 clearly reveals that Bangladesh’s exports to India almost doubled in FY2010-11 from FY2009-10, which paradoxically witnessed a fall in the following year instead of doubling. However, as opposed to the expectation of dramatic increase to cross US$ 1 billion, it could never touch even US$ 600 million. The growth of export experienced both positive and negative trends since FY2010-11 with a significant estimated decline in FY2013-14 (Figure 2).

Table 8: Trend of Bangladesh's Export to India (million US$)29

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>RMG (HS 61&amp;62)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>304.625</td>
<td>12.533</td>
</tr>
<tr>
<td>2010-11</td>
<td>512.506</td>
<td>35.942</td>
</tr>
<tr>
<td>2011-12</td>
<td>498.419</td>
<td>55.024</td>
</tr>
<tr>
<td>2012-13</td>
<td>563.960</td>
<td>75.214</td>
</tr>
<tr>
<td>2013-14*</td>
<td>432.897</td>
<td>92.163</td>
</tr>
</tbody>
</table>

* Projection based on July 2013-May 2014 data.

On the other hand, it can be useful to examine whether CVD on Bangladeshi RMGs has created negative impact on export growth. After granting DFQF Bangladesh’s access RMG exports to India did not experience magical growth altering the situation, although the growth has been quite impressive as can be seen in Figure 2. While the total export declined at 2.75 per cent, RMG export witnessed 53 per cent growth in FY2011-12. Conversely, while total export is estimated to decline by 23 per cent in FY2013-14, the RMG exports continue to demonstrate an impressive growth of 22.5 per cent. Thus, it can be concluded that there is no instance of considerably negative impact of India’s introduction of CVD on Bangladesh’s RMG export to that market, although there is a scope for further improvement of exports through equal treatment by lowering CVD rate for Bangladeshi RMGs to 6 per cent.

28 As per consultation with Manzur Ahmed, Adviser, Federation of Bangladesh Chambers of Commerce and Industry (FBCCI), Dhaka.
29 Extracted from the database of Export Promotion Bureau of Bangladesh.
6. Concluding Remarks

Even though SAFTA brought about some dynamism in intra-South Asian trade, the NTBs in many different forms are still significant barriers to give further boost in regional trade flow towards the potential. To reap the real benefit of trade liberalisation scheme of SAFTA and DFQF access in Indian market for LDCs of SAARC including Bangladesh, the following specific measures should be urgently taken towards reducing the miseries of NTBs:

- The existing warehouse of the importers should be considered as bonded warehouse by India. Until getting the health report the products will be kept in the importers’ warehouse under lock and key. They will start selling the products after getting the health clearance.
- Indian land customs should entertain the ‘Gate Pass’ and allow Bangladesh vehicle to enter Indian part to unload the goods.
- The maximum distance for the vehicle entrance should be 20 km so that the vehicles can unload the goods to the importers’ nearby warehouse.
- Shipment should be allowed in absence of Customs Super and some Acting Customs Super should perform this activity.
- Shipment should be allowed if the trucks reach to the port in a particular day (even not in a serial).

30 Author’s calculation based on the data of Export Promotion Bureau of Bangladesh.
• The working period of land ports should be increased and it should be minimum 12 hours a day, from 7 am to 7 pm.

• Arbitrary shifting of products from ‘duty-free’ to ‘heavy duty’ category is clearly against the spirit of SAFTA. This should be reversed to reap benefits of this regional agreement.

• Construction of warehouse and vehicle loading-unloading shed is essential.

• Restricted port of entry has led to ‘overload’ on some specific ports like Benapole and Tamabil. This should be given a second thought to utilise capacity of other land ports and reduce cost of doing business.

• Mutual recognition of standards, especially between Bangladesh and India, should be introduced to promote trade flow. Currently, the agreement is waiting for approval by the two governments.
Appendix: Instances of NTBs in Bangladesh-India Trade\textsuperscript{31}

Table A1: Time Taken for Export Shipments from Kolkata to Bangladesh

<table>
<thead>
<tr>
<th>Activity</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loading at Kolkata</td>
<td>5.00</td>
</tr>
<tr>
<td>Transit time from Kolkata to Bongaon</td>
<td>10.00</td>
</tr>
<tr>
<td>Waiting time at the outskirts of Bongaon and Petrapole</td>
<td>52.00</td>
</tr>
<tr>
<td>Waiting time at Central Warehousing Corporation parking yard</td>
<td>52.00</td>
</tr>
<tr>
<td>Waiting time at the border gate for entry into Bangladesh</td>
<td>2.00</td>
</tr>
<tr>
<td>Unloading at Benapole</td>
<td>22.00</td>
</tr>
<tr>
<td>Return to Petrapole</td>
<td>5.10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>148.10</strong></td>
</tr>
</tbody>
</table>

Table A2: Share of Tariff and Non-Tariff Costs in Exports from Bangladesh to India

<table>
<thead>
<tr>
<th>Head of Expenses</th>
<th>Value (INR)</th>
<th>% of Tariff and Non-Tariff Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price (f.o.b.)</td>
<td>230</td>
<td>12.3</td>
</tr>
<tr>
<td>Customs Duty</td>
<td>29.9</td>
<td>12.3</td>
</tr>
<tr>
<td>Other non-tariffs (Avoidable)</td>
<td>34.5</td>
<td>14.2</td>
</tr>
<tr>
<td>1. Extra Cost of Truck</td>
<td>18.4</td>
<td>7.6</td>
</tr>
<tr>
<td>2. Additional loading unloading at port</td>
<td>6.9</td>
<td>2.8</td>
</tr>
<tr>
<td>3. Additional carrying cost</td>
<td>9.2</td>
<td>3.8</td>
</tr>
<tr>
<td>CFL test</td>
<td>4.6</td>
<td>1.9</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Importer’s margin</td>
<td>14.7</td>
<td>6.0</td>
</tr>
<tr>
<td>2. Onward Freight (Importer to SS)</td>
<td>15</td>
<td>6.2</td>
</tr>
<tr>
<td>3. SS Margin</td>
<td>14.7</td>
<td>6.0</td>
</tr>
<tr>
<td>4. Onward Freight (SS to Distributor)</td>
<td>15</td>
<td>6.2</td>
</tr>
<tr>
<td>5. Sales tax (VAT)</td>
<td>45.67</td>
<td>18.8</td>
</tr>
<tr>
<td>6. Distributor’s Margin</td>
<td>23</td>
<td>9.5</td>
</tr>
<tr>
<td>7. Retailer’s Margin</td>
<td>46</td>
<td>18.9</td>
</tr>
<tr>
<td><strong>MRP</strong></td>
<td><strong>473.07</strong></td>
<td></td>
</tr>
</tbody>
</table>

Note: 12.3 per cent of the cost is increasing due to customs duty while the avoidable NTBs lead to increase in product cost to 14.2 per cent. The calculation of Table A2 has been revised by the author.

\textsuperscript{31} M. M. Islam, “Trade Cooperation between Bangladesh and India with Special Reference to the North-East India”, Dialogue, Vol. 12, No. 4, 2011.
Abstract

With the deadline for the US withdrawal from Afghanistan getting closer, regional and extra-regional states have indicated pivoting their Afghan strategy. India, being an emerging power, holds much potential to contribute to the stabilisation and reconstruction of war-torn Afghanistan by developing strategic partnership with other stakeholders. For this, India's status in the regional and international system, its economic and military might and its strategy to reach beyond its traditional zone of influence warrant a systemic analysis of its Afghan strategy. The article traces the antecedents of India's current strategic and foreign policy in classical Indian strategic text Arthashstra and analyses India's present level of involvement in Afghanistan in the light of that discussion. An attempt is made in this paper to show how India's Afghan strategy is informed and influenced by its perception of allies, enemies and indifferent big powers. The paper also suggests some policy changes by critically assessing the broader context in which India operates today.

1. Introduction

India, a country with 1.17 billion people, an economy worth US$ 4.5 trillion (PPP), one of the largest standing armies in the world, possessing a substantial pool of conventional and nuclear weapons and considerable diplomatic clout within and outside South Asia, no doubt reflects characteristics of a rising big power. Its status as a key regional actor and its potential in stabilising its immediate and extended neighbourhood has been recognised widely. Afghanistan can be viewed as a test case for India's ambition as an emerging power and its ability to reach out for nations beyond its traditional 'sphere of influence'. For this, a detailed analysis is required.
based on India's evolving stature as a rising power in the international arena, status as a key regional actor and its potential in stabilising its immediate and extended neighbourhood.

The incident of 11 September, 2001 brought the US and its allies in Afghanistan some 13 years ago with an objective to neutralise Taliban and Al-Qaeda. While smoking them out of the caves was relatively easier, it was difficult to get to the top leadership of both the organisations as they had easily crossed the 2,640 kilometre long porous Durand Line to take refuge in Pakistan. However, by killing Osama Bin Laden in May 2011 in the garrison town of Abottabad, Pakistan, the US claimed achieving its target after 10 years of bloodshed and mayhem. Killing of Bin Laden gave impetus to the existing US plan for a phased troop withdrawal from Afghanistan by the end of 2014. With the US withdrawal plan drawing closer, Afghanistan's neighbours with vested interests, intend to play a role in stabilisation and reconstruction of the country. India, in particular, has the potential and interest to be actively engaged in post-2014 Afghanistan. Moreover, the complex geographical and historical contexts of South Asia and India's growing status as an emerging power, its rejuvenated relationship with Central Asian Republics (CARs) and the US' calls for special attention to India's Afghan strategy. For this, the paper revisits the time honoured dictums of Chanakya Kautilya, the chief adviser of Emperor Chandragupta Maurya in 300 BC India. End of the Cold War, shift in power from the West to the East and rise of China, posed critical challenges to India's strategic thinking. Against this backdrop, India took a cue from its past as how to deal with the evolving situation. C. Raja Mohan, a leading Indian strategist, suggested that "Internal balancing, alliances, asymmetric approaches are as old as statecraft. They are not inventions of the modern strategic thought from Europe, but date back to the era of Kautilya's Arthashastra….Unless Delhi is willing to grapple with the basics of statecraft and reconnect with its own traditions of strategy, India will find it increasingly hard to deal with the unprecedented challenges arising from the rise of China". Although written more than millennia ago, the principles enshrined in Kautilya's Arthashastra (Treatise on Polity) are believed to be still influencing the strategic thinking of Indian policy makers. This paper put India's strategy towards Afghanistan in the context of Kautilya's version of realism and geo-politics.

The paper proceeds in four sections. The first section involves theoretical discussion on India's foreign policy and strategy, with focus on roots of its strategic culture. The second section critically examines India's interests and strategies in Afghanistan, referring back to historical ties and strained relationship between India, Afghanistan and Pakistan. The third section analyses Pakistan's reaction to Indian strategy in Afghanistan and its role in Afghan peace process and reconstruction.
Subsequently, Chinese, Iranian and American interests in Afghanistan and their evolving Afghan strategies and India’s place in those strategies gets attention. Finally, the paper reiterates the factors India needs to take into account while formulating its Afghan strategy, keeping in mind the tradition of Kautilyan realpolitik.

2. Roots of India’s Strategic Culture: Relevance of Kautilya

Before analysing the current trends and future scenarios of Indo-Afghan relations, it is imperative to understand the roots of India’s strategic culture and foreign policy postures from historical perspective as against current discourse that ranges from hegemonic perspectives to reactionary arguments. Different scholars have proposed different conceptual frameworks to get rid of this black and white explanation of Indian foreign policy. For example, Maya Chadda explains that ‘relational control’ is an Indian strategy that is used to “…maximize freedom of action and to widen available options in foreign policy so that outcomes can be influenced in one’s favor”. This strategy encompasses several objectives, major among them include: ‘setting rules of the game’, ‘exercising a degree of influence over the actions of neighbours’ and ‘acquiring leverage over the ideology and culture of the region’. But such benign understanding of India’s foreign policy leaves out some contested elements from it. On the surface, India resonates with Asoka’s tradition of non-violence, but realist methods of statecraft characterised by power struggle run beneath this peaceful Indian demeanour. A reinterpretation of classical Indian strategic texts might be useful in understanding this duality in Indian strategic thinking.

The influence of classical Indian strategist Kautilya on India’s strategic and foreign relations has been discussed widely. Ahmed sees a continuation in India’s foreign policy in terms of power projection and alliance formation by tracing antecedents in Kautilyan tradition of diplomacy that projected India as a great power. Kautilya introduced terms like mandala (circle of states), ari (enemy) and mitra (ally). Although not being credited much by the current Indian policy makers, Kautilya’s teachings have had great influence on India’s strategic policy postures. The ari-mitra relationship espoused by Kautilya is particularly relevant in understanding India’s present day Afghan strategy.

To Kautilya, international system composed of mandalas (kingdoms), was essentially synonymous to matsyanaya (big fish eating the small ones). In the absence of any international body or power configuration that could provide stability and security to kingdoms, it was up to the individual kings to ensure security and prosperity of their respective kingdoms even at the cost of continuous power struggle.

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6 Ibid, p. 12.
Arthashastra explains:

The king, who is being possessed of good character and best-fitted elements of sovereignty, the fountain of policy, is termed the conqueror. The king situated anywhere immediately on the circumference of the conqueror's territory is termed as 'enemy'. The king situated close to the enemy, is termed the friend (of the conqueror). In front of the conqueror and close to his enemy, there happen to be situated kings such as the conqueror's friend, next to him, the enemy's friend, and next, the enemy's friend's friend.9

This brief description succinctly lays out the regional political geometry that has informed India's foreign policy and strategy for centuries. In the words of Kautilya, “The King who occupies a territory close to both the conqueror and his immediate enemy in front and who is capable of helping both the kings, whether united or disunited, or of resisting either of them individually is termed as madhyama (mediatory) King…”10 The importance of a distant but powerful state in keeping the balance of power in any region or altering it in favour of a certain country or group of countries also received wide coverage in Arthashastra. Kautilya observed, “He who is situated beyond the territory of any of the above Kings and who is very powerful and capable of helping the enemy, conqueror and the madhyama King together or individually, or of resisting any of them individually, is a neutral King (udasina)…”11

The concept of vijigishu (the king desirous of fresh conquests) introduced by Kautilya also gains significance in the discussion on India's Afghan strategy. One of his strategic perspectives emphasised on turning the vijigishu into a universal monarch.12 To be successful in this endeavour, a vijigishu has to be aware of its position in the mandala. This creates complexity as “...the Mandala system is a very fluid one in which relationships are constantly being interpreted and reinterpreted, thereby creating opportunities for some actors and exposing others to dangers.... For Kautilya, the only way the vijigishu can attain success in the Mandala system ... is by following the Sadguna (six-fold) policy”.13 The sadguna includes sandhi (peace), vigraha (war), asana (neutrality), yana (march), samsharaya (seeking alliance or shelter) and dvaidhibhava (double policy). Although most these policies are self-explanatory, a brief discussion is presented below to help the readers grasp the teachings of Kautilya better.

Sandhi (Peace): The inferior King should always go for peace with the superior one because any other approach would cost the former dearly. Sandhi, in this sense,

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9 Ibid., p. 366.
10 Ibid., p. 367.
11 Ibid.
is an agreement with vows between two unequal powers. *Vigraha* (War): As much as Kautilya appreciated the merits of peace, he thought it was a temporary arrangement, an effort to buy time and induce self-satisfaction in the enemy before striking him hard. Therefore, Kautilya advised the stronger King to make war while he is at the highest peak of power. *Asana* (Neutrality): Only those Kings who think they are indestructible in the face of any enemy attack and have the capacity to destroy the enemy can afford this approach. They can observe neutrality in their foreign policy. There are three aspects of neutrality. One can peruse *Sthana* (keeping quite), *Asana* (retreating from hostility) and *upekshana* (simply refusing to get involved in any particular situation). *Yana* (March): The Kings who have the necessary means at their disposal should advance against the enemy. But the aim might not be engaging into a violent conflict. This preparation for war can induce fear within the enemy and make him submissive to the wills and interests of the powerful King. This way the latter gets what he wants without actually waging any battle with the enemy. *Samshrya* (seeking alliance or shelter): This is for those Kings who lack the capacity to protect themselves (and their interests) and therefore need protection from others. Sometimes a weak King can seek the help of a powerful one to shield himself against the enemy. *Dvaidhibhava* (double policy): Kautilya showed his true ‘realist’ colour by suggesting this particular approach. In his own words ‘Whoever thinks that help is necessary to work out an end shall make peace with one and wage war with another.’ This particular approach is open to interpretation. Some think that it might mean forging an alliance with a neighbour to attack a third party. But it can also be understood as a policy to induce a false sense of confidence and security and act in a hostile manner behind its back. The instruments to achieve/implement the aforementioned policies can be equally opportunistic. For example *Sama* (reconciliation) with the enemy is an instrument that is preferable only when success in any other way is impossible. In Kautilya’s grim worldview, conflict was an inevitable part of political life. So there is no such thing as permanent alliance or cessation of hostility in his scheme of orders. *Dana* (gift) is an instrument that should not be used with altruistic purpose, but to win over the weaker Kings and cultivate compliance in them without waging a war. If this supposedly generous instrument fails to neutralise the threat, the use of *Bheda* (dissention) is suggested. *Bheda* is all about creating division within the enemies so that they no longer constitute a viable singular threat. *Maya-Indrajala* (Deceit or Pretence) can be used to make the enemy believe that King in concern is approaching him with honest intentions of peace. But underneath those peaceful demeanours or the cloaks of righteousness remain the everlasting aggressive intentions. *Danda* (Open Attack or War) was not advised by Kautilya until all other instruments of statecraft had been exhausted. He mentioned two interesting things while considering *Danda*. Before waging war, a King must carefully speculate the strength of enemy’s economy and the level of popular support he enjoys at home.

14 R. Shamasastry, op. cit., p. 371.
Based on the above discussion, it could be underlined that both peace and non-violence constituted part of Kautilya’s teachings; as a result it could be argued that the strategic policy postures like non-alliance and non-violence initiated after India’s independence indeed were not a deviation from Kautilyan tradition, rather a continuation of it.\textsuperscript{16}

As K M Panikkar noted, although not acknowledged openly, Kautilya’s intellectual inheritance is firmly rooted in the strategic subconscious of India.\textsuperscript{17} R. Zaman also argues that Kautilya’s wisdom is passed on from generation to generation through oral transmission in India.\textsuperscript{18} This explains the apparent dearth of mention to Kautilya in India’s policy making circles. Through a detailed and systematic case study of India’s position on non-aligned movement, its relations with Israel and South Africa, H. Solomon also concludes that Indian foreign policy is the infusion of classical realism rather than a drive for “Southern Solidarity”.\textsuperscript{19} Although Solomon argues that since independence India has been conflicted between two contradictory philosophical traditions of Kautilya and Asoka, the authors agree with Ahmed’s assertion that this apparent contradiction is actually the continuation of Kautilyan tradition in one form or the other.

So how does twenty first century Afghanistan fit into all these discussions of ancient Indian realpolitik? To get this answer, it is necessary to look at Afghanistan’s position as India’s neighbour and its strategic importance to India. Geopolitically Afghanistan holds a very important position for both India and India’s arch nemesis Pakistan. Considering India’s current circumstances and Kautilyan teachings, the conqueror (India) has an opportunity to collaborate with the ‘enemy’s enemy’ (Afghanistan) in an effort to subdue the original Ari or enemy (Pakistan). It would help India create a patron state in strategically important neighbouring countries. Apparently, it is easy to dismiss Afghanistan as a madhyama (mediatory King). But the fact is that a non-friendly, Taliban dominated pro-Pakistani, government in Kabul after 2014 can be a cause of concern for India. Similarly, a pro-Indian Afghan administration can deny Pakistan its ‘strategic depth’ in Afghanistan and offset its strategic advantages vis-à-vis India. Further adding to the complexity, China (an ari) has potential to become a mitra (friend) of India temporarily. Iran - a mitra notwithstanding troubled relations with the US (udasina) could continue to remain a mitra of India in Afghan case. Gaining the blessings ofudasina is also vital in securing and retaining the regional hegemonic status in South Asia. In the Indo-Pak row over Afghanistan, the role of anudasina like the US is very crucial, because the regional powers in South Asia would almost automatically adjust their Afghan policy in accordance with changes in the US

\textsuperscript{16} Imtiaz Ahmed, \textit{op. cit.}, p. 221.
\textsuperscript{18} Rashed Uz Zaman, \textit{op. cit.}, p. 338.
strategy. At the same time, they will vie for attention of other powerful but undecided countries like China.

India has recently stepped up its activities in Afghanistan. By claiming its stakes in Afghan affairs, India is trying to reach beyond its traditional sphere of influence that has mainly been limited to the South Asian region. By using the concept of ‘extended neighbourhood’ in recent years, India has stretched its zone of influence from “the Suez Canal to South China Sea and includes within it West Asia, the Gulf, Central Asia, Southeast Asia, East Asia, the Asia Pacific and the Indian Ocean region”. D. Scott explains that the “vision of an extended neighborhood has become the conceptual umbrella for India; eastwards, southwards, northwards and westwards….” Moreover, India’s former foreign minister Pranab Mukherjee reinforced in 2006 that, “India’s foreign policy today looks at India’s environment in expanding circles…starting with the immediate neighborhood …moving on to…the extended neighborhood”. As it has been discussed earlier, the idea of circles and immediate and extended neighbourhood are not novel inventions in India’s foreign policy. Kautilya himself stressed on the need for “Throwing the circumference of the Circle of States beyond his friend’s territory, and making the kings of those states as the spoke of that circle, the conqueror shall make himself the nave of that circle”.

Based on the above discussion of Kautilya’s strategic framework, a reinterpretation of his timeless wisdom will be used to explain India’s strategic perspectives towards Afghanistan in the following sections. Also, an attempt will be made to discuss alliance building paradigm against the backdrop of evolving strategic contours.

3. India’s Afghan Strategy: Winning over a Madhyama

Afghanistan had boundary issues with British India, however after India’s independence and birth of Pakistan, the latter inherited the border dispute with Afghanistan. That made India and Afghanistan natural allies or mitra following Kautilyan logic of geo-politics. But as subsequent discussions will reflect, regime change in Kabul has had the potential to ruin this ‘natural’ alliance between India and Afghanistan. So apart from being an occasional case of ‘enemy of my enemy’ for India, Afghanistan exhibits all important features of a madhyama as identified by Kautilya.

21 Ibid., p. 107.
22 Ibid., p. 108.
Recently, Afghanistan has presented itself as a useful gateway to the enormous reserves of natural resources and markets of Central Asia for India, as a result Central Asia features prominently in the extended neighbourhood policy of India. Energy diplomacy and economic development were identified by India in 2002 as the two cornerstones of its foreign policy towards the Central Asia.\(^{25}\) To meet its growing appetite for energy, India acquired exploration rights to three out of four blocks of the Hajigak iron ore deposit.\(^ {26}\) This will be instrumental for Afghanistan to generate quick revenue from the US$ 7.6 billion Turkmenistan-Afghanistan-Pakistan-India gas pipeline project that is supposed to bring natural gas from Turkmenistan to India by 2017.\(^ {27}\) Therefore, an unstable and chaotic Afghanistan would adversely affect India's economic interests.

Economic imperatives alone are not the driving force behind India's strategy in Afghanistan. The motives of India's natural *ari* (enemy) Pakistan's preference to use asymmetric warfare in dealing with superior foes also influences Indian policy towards Afghanistan. Since its birth in 1947, Pakistan has not only faced existential threat from India but also defeat in the 1965 and 1971 wars. As a result, the strategic balance in the region shifted in favour of India mainly because of its role in carving out Bangladesh from the map of Pakistan in the 1971 war and conducting nuclear tests in 1974.\(^ {28}\)

Soviet invasion of Afghanistan in 1979 presented a long awaited opportunity to Pakistan to redeem the lost balance with India. Funded by the Central Intelligence Agency (CIA) and trained by the Inter-Services Intelligence (ISI), the anti-Soviet *Mujahideens* proved useful in fighting a proxy war with India in Kashmir. R. Hussain aptly points out that Pakistan was caught between powerful India on its eastern flank and an irredentist Afghanistan with claim on Pakistan's Pashtun dominated territory on the western side of the border and when the opportunity presented itself, Pakistan transmitted the historical animosity between the state of Pakistan and the Pashtun nationalists in both Afghanistan and Pakistan to India.\(^ {29}\) Even during the short period of Taliban reign in Afghanistan (1996-2001), Pakistan exerted considerable influence to use Afghanistan as a launching pad to neutralise Indian interests by developing antagonistic behaviour towards Afghan Hindus and Sikhs, instigating the Taliban against repression of Muslims in Kashmir and establishing training camps


\(^{26}\) Ibid.


in Afghanistan to train missionaries for jihad in the disputed Jammu and Kashmir region.30

After 9/11, Operation Enduring Freedom changed the matrix and offered Pakistan limited choice to either continue its support to a corrupt, fundamentalist Taliban regime which became target of the US or to become a partner in the US-led ‘war on terror’. Though President Pervez Musharraf, the then military ruler of Pakistan, publicly denounced Taliban and severed ties with it, his government and military continued to maintain clandestine relations with the ‘useful’ militant elements around Af-Pak border. Today, it is a well-documented fact that the ISI provided shelter to the Taliban leadership after the US launched its operation in Afghanistan in late 2001.31 These militant forces within Afghanistan supported by the Pakistani military continue to orchestrate attacks against Indian interests in and outside India.

Against this backdrop of neighbourly hostility between India and Pakistan, Afghanistan's unique position in the region has made it a strategic pawn for both of these countries at different times. India made a strategic blunder during Soviet occupation of Afghanistan by not publicly denouncing the invasion.32 Not to repeat the mistake of the past, India quickly grabbed opportunity to nurture an ally in Tajik-led faction of the Northern Alliance after the fall of the pro-Soviet regime in 1989. To sustain a strong opposition to Pakistan’s ally Taliban in Afghanistan, India continued supplying Ahmed Shah Masoud with high-altitude war equipment, helicopter technicians and services of military strategists.33

Since re-establishing its diplomatic ties with Afghanistan after the fall of the Taliban regime, India has been trying to win over the hearts and minds of the Afghan people by projecting its role as a development partner. Discouraged by the US to be involved militarily, India made a prudent decision by preferring ‘soft power’ option. Dana (gifts)—one of the instruments of the sadgunya (six-fold policy) of Kautilya—has been the preferred Indian method for rejuvenating friendly relations with Afghanistan. Over the last decade, India became the fifth largest donor for Afghanistan, pledging over US$ 2 billion in aid.34 India not only heavily invested in construction of road link from Afghanistan to Iran to woo the Afghans but also strategically reduced dependence on Pakistani ports for international trade. In addition, it also invested in critical infrastructure that includes electric power plants, hospitals and even a

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31 Ibid., p. 11.
33 Ibid., p. 107.
Parliament House among others. To build a lasting bond with the younger generation, India offered scholarships to 1000 Afghan students in Indian universities.35

India also contributed in training and equipping Afghan National Security Forces in collaboration with the NATO forces36 which was appreciated by Secretary of Defense, Leon Panetta during his visit to New Delhi.37 At the same time, India initiated confidence building measures with Pakistan in political and economic spheres,38 as well as with moderate Taliban by inviting secretly its leader Mullah Abdul Salam Zaeef to India39 with an objective to give credence to peace process in Afghanistan and meet its strategic objectives there. This is a reflection of Kautilyan teaching that encourages sama (conciliation or negotiation) ‘when success in dangerous situation is minimally likely’.40 In situations like these, where Pakistan clearly holds an advantage over the militant forces, starting talks with the militant leaders and their sponsors to avert future disasters for India and Afghanistan seems a prudent idea.

So far India has been quite successful in implementing the instrument of dana, which is to be applied ‘to the inferior Kings and discontented people with the avowed purpose of winning them without bloodshed’.41 The above mentioned Indian initiatives in Afghanistan have generated a constructive and positive image of India among the war-torn Afghans. A 2009 Gallup survey showed that 56 per cent of the Afghans recognised India’s role in reconstruction more than any single group.42 Just after the Indian embassy attack in Kabul (by the militant groups allegedly supported by Pakistan), India pledged additional financial assistance indicating its long term commitment to Afghanistan.43

But why is India tolerating that much sufferings and casualties in Afghanistan? Why is it not going for danda (open attack or war) as retaliatory moves? Arthashastra has an answer for this one too. As Kautilya observed, “Whoever thinks that in the course

35 William Dalrymple, op. cit., p. 10.
40 Imtiaz Ahmed, op. cit., p. 220.
41 Ibid.
43 Ibid.
of time his loss will be less than his acquisition as contrasted with that of his enemy, may neglect his temporary deterioration. Present day India also chose to downplay these damages to reap the benefit of sympathy and trust of the Afghan people and the government. Indian resilience to these setbacks caused by Pakistan only strengthens its position as a friend to Afghanistan. Indian commitment to stay in Afghanistan in spite of periodic terrorist attacks has proved to be a worthy investment for the former. Not only the common Afghans in street, but also the policy makers in Washington have realised the potential of India in shaping the future of Afghanistan for better. Pakistan considers India as an existential threat whereas India accuses Pakistan of sponsoring cross-border terrorism. Both have ongoing conflict over Kashmir that has resulted in fighting four wars in 1948, 1965, 1971 and 1999. Pakistan and Afghanistan have ongoing conflict over the Durand Line and Kabul considers the FATA region in Pakistan as part of Afghanistan. Moreover, Pakistan’s support to the US to wage war in Afghanistan against Taliban turned Pakistan as an enemy state. Both India and Afghanistan consider Pakistan as a destabilising factor, thus constitutes a common enemy. Gradually, India has presented itself as an indispensable solution to the Afghan problem.

India’s exercise of patience and resilience against Pakistani influence in Afghanistan can also be traced back to Kautilya’s advice on approaching an equal enemy. Kautilya believed that a natural enemy is only allowed to grow and flourish unabated if there is a chance that ‘my enemy, possessed as he is of immense power, will yet in near future, hurt the elements of his own sovereignty;…. he will… fall into my hands, as he has neither a friend nor a fort to help him; that a distant king is desirous to put down his own enemy, and also inclined to help me to put down my own assailable enemy when my resources are poor; or that I may be invited as a Madhyama King.’

India might as well watch and wait for Pakistan to get weaker from its internal strife rather than going for some kind of physical confrontation over Afghanistan, which will be costly in economic and human terms. Another important reason India is tolerating Pakistan’s arrogance of power in Afghanistan is because in the current context the usasina is deeply tied to India’s natural ari (Pakistan), which is the closest match to Indian military might in the region. As a power broker in South Asia, the US has no immediate interest in appeasing Indian demands regarding Afghanistan over Pakistani ones. The mild American scolding after Pakistani supported attacks against Indian interests in the last couple of years and slow but steady improvement of US-Pakistan relations after the disaster in Abbottabad exposed this strategic calculation of the US. So India realises that it has to wait till the US strategic interests get diffused or mutated in the region and Pakistan becomes considerably weak from its own internal problems to activate a more assertive Indian mode in Afghanistan.

44 R. Shamasatry, op. cit., p. 375.
46 Ibid., p. 368-369.
4. Kautilyan Geo-politics: Role of Alliances in Securing Regional Interests

In this section an attempt is made to critically analyse the evolving regional power dynamics and focus on India’s strategic equations with Pakistan, China, Iran and the US from Kautilyan perspectives and Afghanistan’s position in these power calculations.

4.1 Pakistan: A Natural Ari (enemy)

Harsh V. Pant observes that the Indo-Pak row over Afghanistan is a classic case of security dilemma where improved Af-Pak relations generate increased insecurity for India and cordiality in Afghan-India relationship shifts the balance of power against Islamabad.\(^{47}\) When Musharraf decided to go with the US in 2001, Pakistan was not only expected to help neutralise Al-Qaeda and Taliban elements but also contribute to stabilise post-Taliban Afghanistan and strengthen Karzai government. However, in this regard Islamabad’s credentials remained mostly questionable because Musharraf and his successors failed to dismantle the establishments which provided Taliban logistic support and training. Rather Pakistan military perceived Taliban as a tool to control Afghanistan and undermine Indian influence there.\(^{48}\)

Even with India’s moderate presence in Afghanistan (around 500 security personnel) Pakistan feels challenged.\(^{49}\) Islamabad suspected that Indian consulates in Afghanistan are aimed at collecting intelligence on Pakistan, stir rebellion in Baluchistan and North West Frontier Provinces, and provide funding and weapons to Baluchistan Liberation Army.\(^{50}\) The visit of Prime Minister Manmohan Singh to Kabul in 2011, which resulted in signing a strategic partnership agreement between the two countries, caused further panic in Islamabad.\(^{51}\) The agreement included among other aspects, closer cooperation on security, and provision of light weapons as well as training in counter-insurgency.\(^{52}\) Although Karzai clarified that the agreement was not “aimed at any country”\(^{53}\), Pakistan had its own inhibitions.

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\(^{49}\) William Dalrymple, op. cit., p. 5.

\(^{50}\) Ibid, p. 11.


In recent months, Islamabad’s relations with New Delhi have improved at the margins, but sparks between Pakistan and India could be reignited all too easily. The recent border skirmishes along the disputed Line of Control\(^54\) reflect just another illustration of fragile relationship between the two neighbours. India’s insistence on bilateral discussions as per the Simla Accord and Pakistan’s stance on multilateral solution\(^55\) further exacerbate the Kashmir issue. The fate of Afghanistan largely hinges on mutual understanding between India and Pakistan over Afghan matters.

4.2 **China: An Ari (Enemy) with the Potential to be An Occasional Mitra (Friend)**

China with its big appetite for natural resources has played a low key but important role in the economic growth of Afghanistan.\(^56\) Though it has not put any military foot-print in Afghanistan, it envisions playing a constructive role in the post-US withdrawal phase. This was visible in early 2013 when the US and China launched a joint programme to train Afghan diplomats.\(^57\) China’s initiative to incorporate Afghanistan as part of Shanghai Cooperation Organisation further aims to promote its economic interests as well as facilitate dialogue among different political actors in Afghanistan.\(^58\) By far, China has become the biggest investor in Afghanistan with the award of a licence to China National Petroleum Corporation to explore oil fields in northern Afghanistan’s Amu Darya basin with potential reserves of over 80 million barrels of crude oil.\(^59\) In addition, China acquired mining rights to the tune of US$ 80 billion in Aynak copper deposit in 2007.\(^60\)

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The Chinese investment projects in Afghanistan have come under militant attacks recently, this in turn has forced Beijing to seriously consider the ramifications of instability emanating from Afghanistan to its largely Muslim dominated Xinjiang province and Taliban’s association with Uighur separatist movement. It is important to note that China did not recognise the Taliban government in the 1990s; but after the fall of the Taliban, Beijing not only resumed diplomatic relations with Kabul but also signed a Treaty of Good Neighbourly Friendship in 2006.

Sino-Indian bilateral relations suffer from mutual trust deficit mainly since the 1962 Chinese incursion. Further, both have been vying long for their influence in the energy rich CARs including Afghanistan. As Zhang Guihong explains “an emerging India does mean a strong competitor for China from South, East, Southeast Asia and Central Asia to Indian and Pacific Oceans where their interests and influences will clash”. India, on the other hand, feels stifled by Chinese encirclement in South Asia through a ‘string of pearls’ that includes construction of seaports in Bangladesh, Pakistan, Myanmar and Sri Lanka that could prove as strategic assets for China.

In addition, evolving Sino-Pak ‘all weather friendship’ does not bode well in Indian strategic circles. The situation gets even more complicated with both India and China competing to project their power in the Indian Ocean.

Although rivalry over influence in each other’s extended neighbourhood has strained Sino-Indian bilateral relations for so many years, India realises that working closely with China could help achieve common goals in Afghanistan. India seems to be in the mood for sandhi (accommodation or co-existence which was one of Kautilya’s six-fold policies) with China on Afghan issue. In this regard, India and China held consultations in April 2013 regarding counter-terrorism with emphasis on post-withdrawal Afghan situation. China would still like to have a Pakistan card under the sleeve to curb Indian influence in what it views as its ‘extended zone of influence’. Nevertheless, considering the expanding Sino-Indian economic relations, it appears China would discourage Pakistan to create instability for India or any other

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neighbour, mainly to minimise the US interest in the region and establish a conducive environment for its own influence in the region.\textsuperscript{67} Recent developments in Sino-Indian diplomacy indicate that both recognise importance of each other in the changing regional strategic context. This was perceptible during Manmohan Singh’s visit to Beijing in October 2013 where the two countries reached an agreement on border defense. Signing of this agreement culminated in diffusing trust deficit that had built over alleged Chinese incursion into Indian Territory in April 2013.\textsuperscript{68}

India intends to team up with China to deter Afghanistan from plunging into a state of chaos and violence. This could be a classic Kautilyan move where temporary alliances are built between countries to achieve some short-to-medium term strategic objectives in a \textit{mandala}. This momentary friendship between two natural enemies with disputed borders does not make them friends forever; rather utilises the room for mutual collaboration for some common purpose. According to Kautilya: “One shall make an alliance with a king who is stronger than one’s neighboring enemy;… for there can be no greater evil to kings than alliance with a king of considerable power, unless one is actually attacked by one’s enemy”\textsuperscript{69} In this case, Pakistan being the greater threat to Indian interests, India might as well rethink its China strategy \textit{vis-à-vis} Afghanistan.

4.3 \textit{Iran: A Potential Mitra (Ally) with a Troubled Relationship with the Udasina}

Iran’s role in Afghan situation has received mixed reviews\textsuperscript{70}, that ranges from a marginal player\textsuperscript{71} to having some influence over western Afghanistan that was once part of the Persian empire\textsuperscript{72} and its support to Shia and other Persian speaking minorities in that region.\textsuperscript{73} Iran’s interest in keeping its eastern flank clear by curbing the narcotics trafficking route might be a good incentive for it to be more positively engaged in Afghanistan.

Although not Washington’s first or may be even the last preference, Iran holds an influential position in Central Asia and can help the US and other regional stakeholders to achieve their goals in Afghanistan. As M. Olcott observes, “While the future of US-Iranian relations is unclear, any improvement in the relationship would

\textsuperscript{69} R. Shamasastry, op. cit., p. 375.
\textsuperscript{70} Anthony H. Cordesman, op. cit., p. 7.
\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid.
facilitate the success of US-supported initiatives in Afghanistan.” This may include the ‘New Silk Road’ strategy, that has a bearing on improving Afghanistan’s economic ties with the Central and South Asia, and the confidence-building process, which fosters high-level dialogue on security, political, and economic cooperation among Afghanistan and its neighbours.

Geo-strategists believe that improved Indo-Iranian bilateral relations owe their genesis to India’s goals and aspirations in Central Asia as a rising great power. The Zarinj-Delaram road project exhibits how closely India needs to work with Iran to counter rising Chinese influence in Central Asia. India would like to continue its collaboration with Iran, notwithstanding being trapped in the diplomatic rivalry between Iran and the USA. With warming of its relations with the USA, India finds it difficult to strike the right balance between its approaches to Washington and Tehran. Without a green signal from the powerful *udasina* (the US), there is only so much India could do to realise the potential of Indo-Iranian partnership in Afghanistan.

### 4.4 United States: The Powerful *Udasina*

English interpretation of Sanskrit term *udasina* has given rise to much speculation and left room for subjective interpretation. Exchanging *udasina* for neutrality makes the category highly problematic in explaining international relations through a realist prism. Hence, further explanation of the specific English synonyms used to analyse this category of state by different scholars at different times is imperative. P. Banarjee contends that the term *udasina* was probably applied by Kautilya to describe a King who remained passive in regard to both the contending parties. P. K. Gautam has used the term ‘neutrality’ and ‘indifference’ synonymously in explaining Kautilya’s *udasina*. R. Zaman also chose the word indifferent in clarifying the meaning of *udasina* in *Arthashastra*. The paper explains Kautilya’s *udasina* (neutral power) as not being a disinterested or objective great power because the US has the capacity and capability to influence the balance of power in the region. In international relations, neutrality rarely ever amounts to ‘impartiality’. Even the most powerful state never bases its external policy on objective calculations. Rather it is based on well calibrated understanding of its own national interests. If any great power seems ‘indifferent’ in any given situation, it is because ‘indifference’ works in its

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79 Rashed Uz Zaman, op. cit., p. 237.
favour at that particular time. Therefore, the paper describes *udasina* as a powerful country that does not have any genuine concern for the interests of other countries in a certain region while achieving its (*udasina*’s) foreign policy objectives and long term strategic goals in that region. But the very activities of such an *udasina* can tilt the regional balance of power in favour of one country or the other. As such, securing the support of an *udasina* is vital for any regional power politics situation.

The major objective of US in Afghanistan is to root out Al-Qaeda sponsored international terrorism. To meet this objective, instead of aligning with one *mandala* or the other, the powerful *udasina*, issued blanket calls, such as on 20 September 2001, President George Bush issued a statement that “Either you are with us, or you are with the enemy”.80 In this scenario, the neutrality of the US could be mapped based on pursuing its own stated objectives, in the process it sought help from the major regional powers (kings or conquerors in Kautilya’s *mandala*). In this case it is imperative that: a) the US does not want to stay in Afghanistan indefinitely, b) it established one-on-one relationship with India and Pakistan, instead of aligning with one or the other, c) it promoted sort of neutrality in its relations with regional countries as the major objective was to meet the challenge of international terrorism, d) when the US identified Pakistan’s role in Mumbai attack, it pressurised Islamabad to maintain regional harmony to fight for the bigger cause of international terrorism. In sum, the US holds the key to successful engagement of regional players in Afghan situation and maintaining regional stability. The *udasina*’s decision to prioritise one neighbour of Afghanistan over the other alone can change the strategic calculations in South Asia.

Considering that both India and Pakistan are trying to present themselves as the only suitable candidate for US blessings in Afghanistan, experts believe that any prudent post-withdrawal US strategy would include India in it.81 According to Chalk and Hanavar, “Not only is India a more reliable partner than Pakistan, but it has far more to contribute to stability and security in Afghanistan and in the wider regions of South and Central Asia”.82 The most credible argument in favour of selecting India as a post-2014 ally appears to be the evolving bilateral relations between India and the US, aimed at bigger strategic calculations, that is counter-balancing a rising China. But buttressing India for a stable Afghanistan might upset a nuclear armed Pakistan. To avoid escalation of regional tension, experts suggest a ‘concert of powers’ (forum of *mandalas*) involving other regional states that could prove instrumental in reconstruction and stabilisation programmes in Afghanistan. As mentioned earlier,

some of these regional powers have complicated bilateral relations with the US. In that case, India might extend hand for mutual collaboration with countries like Iran, Russia and Turkey by throwing the ‘circumference of the Circle of States’ beyond its friend’s territory.\(^{83}\)

Although the US promises visibility and presence in a different capacity in Afghanistan even after withdrawal of the troops, it will have lesser influence on the events then. That is why it should initiate dialogue and confidence-building measures between India and Pakistan. Pakistani support is required to tame the Taliban and other militant groups in the region. At the same time, uninterrupted Indian support is needed to build the ground for economic and social progress in Afghanistan. Till now, the US has dealt with these two vital allies one-on-one basis, giving scope for suspicion in both countries. The current format of trilateral negotiations between the US-Afghanistan-Pakistan and the US-Afghanistan-India should give way to a quadrilateral forum including all four stakeholders.

5. Conclusion

Afghanistan is a test case for Indian strategists. Becoming a vijigishu is not an easy task. India, being economically, politically and militarily the strongest country in the South Asian region, needs to deal with its neighbours with prudence and regional sensitivities, while embarking on its great power ambition. The particular interpretation of geo-political reality as espoused by Kautilya centuries back is still implicit in Indian strategic thinking even if the country has failed to put a ‘grand strategy’ on paper. The apparent inconsistency in Indian approach towards its neighbours (both ari and mitra in the South Asian mandala) is thus not whimsical or impulsive; rather it is based on an understanding of international politics that is characterised by ‘fluidity’ of inter-state relations. A methodical categorisation of enemies (ari) and allies (mitra) and a clever manipulation of context in building alliance to counter any anti-hegemonic force within the region give Indian strategy a certain level of stability and clarity of purpose.

Based on this observation, the paper tries to highlight how Afghanistan’s geo-strategic location has put it in the priority list of India in terms of ensuring access to energy rich CARs and resisting Pakistani asymmetric warfare stratagem. India’s improved relations with the udasina (the US) and its defrosted nature of engagement with another natural ari (China) have been explained following this conceptual framework. Iran has also come to play an important role in securing Indian interests in Afghanistan despite American reservations on the role Iran could play. All in all, India has been playing its Afghanistan cards cautiously and creatively. India still needs to come to terms with certain issues to gain further clout in Afghanistan through the

inclusion of major stakeholders (expanding *mandalas*), added appreciation of its works by the *udasina* and support of other neutral and ‘not-so-indifferent’ powers.

It appears that India would not like to fill the vacuum created by the US forces in Afghanistan, but would continue to provide development aid (*dana*) to support developmental projects even by encouraging private investment and taking necessary measures to integrate Afghanistan with the SAARC economy. The scepticism of the South Asian countries about the US motives and objectives in the post-troop withdrawal Afghanistan, brings back the crude form of power politics in the region (*matsyanaya*), forcing each state to maximise its strategic resources and political clout around Afghanistan at the expense of the other.

So it would not be wise for India to try and shun the questionable elements of Afghan politics in fear of increased militancy in Kashmir. If anything, co-opting with the elements carefully chosen by the US for accommodation (*sandhi*) in Afghan politics might make India's role in post-2014 Afghanistan more relevant. It is not easy to do away with the Taliban in only 12 years, especially when much of the US effort has been directed against Al-Qaeda and Osama bin-Laden.

In response to the Afghan situation and evolving strategic clamour, India needs to adjust the ‘circumference of its circle’ as espoused by Kautilya, considering the ‘fluidity’ of the situation. For this, attention needs to be paid to the new regional dynamics created by natural *ari* Pakistan’s democratically elected Sharif government’s limitations in reining radical and fundamentalist groups and shift in Pakistan’s perception of existential threat coming from ‘inside’ rather than from India. At the same time, the opportunity to forge alliance (*sandhi*) temporarily with another natural *ari* China through conciliation (*sama*) on anti-militant and terrorism issues should be utilised properly. In this regard, Chinese perceptions of India's place in the Asian strategic game plan and China's support for Pakistan coupled with its strategic presence in the Indian Ocean should be taken into consideration. The policy posture of US (*udasina*) towards India to counter rising China is also of paramount importance. India should respond to these changing situations as per Kautilya's *Sadgunya* (six-fold) policy. As an aspiring and capable great power, India’s strategic objectives and goals need to consider these country specific situations as well as regional dynamics while implementing its Afghan strategy. In this case, careful and timely use of the different combination of instruments suggested by Kautilya to execute the *Sadgunya* would keep alive the broader framework of Kautilyan tradition of diplomacy.
DO THE WEAK AND COLLAPSED STATES POSE A CHALLENGE TO THE REALIST WORLDVIEW?

Abstract

Weak and collapsed states are portrayed as the primary global threat to security so frequently by the politicians, journalists and policy makers that it has almost become a reality. Yet, this seemingly universalised and undertheorised concept bears a different meaning to each actors and demands critical examination. From an international relations perspective, this paper examines the extent to which the weak and collapsed states challenge the realist account of maintaining world order. Conceptualising state weakness, this paper outlines the key realist assumptions to contrast those in weak states’ context. Highlighting the realists underpinning that the structure of international system is resilient, the paper concludes that the concept of weak and collapsed states is a political construction and such states do not constitute a critical mass challenging the essential continuity of international order. International system is still dominated by powerful states and the opportunity for weak states to graduate upward under a resilient international system tends to outweigh the forces of weak and collapsed states, keeping the realist account of world order undaunted.

1. Introduction

Notwithstanding the inherent ambiguity, lack of rigour and specificity associated with the concept of state weakness, there is an apparent consensus that such states disappoint the realist world view of achieving and maintaining international order and security not least because they represent an ‘antithesis’ to what policy makers and academics deem as modern ‘state’. Realists assume ‘states’ as rational unitary actors, constituent repository of power and authority that operate in an anarchic international system in pursuit of their national interests. In contrast, weak and collapsed states are often characterised as ‘mere juridical’ entities with ‘negative sovereignty’ and are perceived by some as the ‘greatest security challenge’ begging...
WEAK AND COLLAPSED STATES

to be ‘fixed’ in order to maintain international political order.4 But, do these weak and collapsed states constitute a ‘critical mass’ to challenge the realist worldview5 of international order or is it just a political construction? To answer this question, this paper examines the issue under three broad segments. Section 2 contextualises the agenda and sets the conceptual foundation navigating through the highly fragmented and overlapping literature on state weakness. Section 3 elaborates the key realists’ assumptions and contrasts those in the weak and collapsed states’ context. Section 4 examines whether the weak and collapsed states constitute a critical mass challenging the essential continuity of international political order as viewed by the realists. Finally, the paper contends that although the weak and collapsed states represent an ‘antithesis’ of what a modern state should be, the perceived threats from such states challenging the realist worldview is a misleading political construction. The international system dominated by powerful states is resilient to withstand any such unit level changes keeping the realist account of world order undaunted.

2. State Weakness: Context and Concept

2.1 Contextualising the Agenda: A Misleading Political Construction?

At the heart of this analysis lies the importance attached to the seemingly universalised and under-theorised concept of weak and collapsed states6 and its implications on the international order and security as ‘constructed’ by the realists – the dominant orthodoxy in international relations theory. Small weak states existed in Europe on the periphery of Carolingian Empire in the middle age while Greek city-state system was famously war-prone and so was the case with small Chinese states during the ‘warring state period’ of 403-221 BC. In contemporary literature, Joel Migdal arguably introduced the term ‘weak states’ while Jackson offered a more controversial concept of ‘quasi-states’. Indeed, weak states have always been part of international system. Such states were the ‘proxies’ and ‘battlegrounds’ during the Cold War and considered irrelevant and peripheral in the realist worldview. However, in recent times, juridical’ weak states with ‘negative sovereignty.’ Mark Duffield terms it as ‘contingent sovereignty’. See Mark Duffield, Development, Security and Unending War: Governing the World of People, Cambridge: Polity Press, 2010, Chapter 3.


5 Realism has many strands. In structural realism, states are ‘security seekers’ and in motivational realism states are essentially ‘greedy’ (or a mixed motive state). This paper is based on the shared and dominant concepts of realist school of thoughts.


167
particularly after 9/11, the weak and collapsed states have become both referent and threat — perceived by many as the ‘single-most important problem for international order.’ Such perceptions postulate that the weak and failed states are fraught with ungoverned territory and are breeding grounds for international terrorism, organised crime, spread of pandemic diseases, etc. National security strategy papers of many countries view the inability of the weak and failed states to effectively govern their own territory or to work with their neighbours to ensure regional security as the greatest challenge to the regional stability and the international system.8

Contrasting such perceptions, many researchers have shown that the agenda of weak states relates more with the ‘crisis of (states’) capacity’ and ‘freedom from want’ as opposed to ‘crisis of authority’ grounded on ‘freedom from fear’ by the international community. Patrick Stewart, Susan Woodward and Edward Newman in their compelling findings report that there is no empirical basis of connecting international terrorism with weak and collapsed states.9 The 2012 Global Terrorism Index also reveals that the top ten countries most affected by terrorism include a diverse mix of states ranging from Afghanistan, Somalia to India and Russia.10 Thus, the hyped-up post 9/11 agenda of weak and collapsed states can be better understood and explained as a political construction. Indeed, such a misleading political construction has profound implications. First, it reduces the agenda of ‘state’ to ‘whether states are good or bad’ ignoring the fact that states are merely an instrument and defined by their means, not their ends. Second, it serves as a


pretext and often justifies interventions (humanitarian or otherwise) by the powerful states. Third, in an era of aid selectivity and growing interdependence, it serves the donors with a reason to pick-and-choose countries that conform to their prescribed normative model of statehood (i.e., having liberal democracy, free market economy and specific institutional requirements etc.). Finally, more worrisome is the fact that it turns the international community’s attention to ‘freedom from fear’ stream over the ‘freedom from want’ of the human security discourse. Such a shift of attention and resource allocation subdued the interest, development and welfare of the vast majority of world’s population living in weak and collapsed states as they concentrate more on containing the ‘security threats’. To de-construct this misleading political construction, it is essential first to examine the realist underpinning of state as the unitary rational actor and the antithesis of stateness represented by the weak and collapsed states.

2.2  **State - The Unitary Rational Actor**

The international system is based on Westphalian concept of ‘state’—a territorially defined socio-political entity codified as internally sovereign and externally recognised by other states.\(^{11}\) The fundamental similarity of modern states, albeit exceedingly varied in nature and types, includes the ‘idea of state’ together with its ‘physical base’ and the ‘institutional expression’.\(^{12}\) While the absence of institutional capacity due to the lack of ‘despotic power’ and/or ‘infrastructural power’ could result in state weakness, the absence of a domestic socio-political consensus can erode the less-tangible realm of ‘the idea of state’ making the state incapable or unwilling to fulfil its responsibilities of providing political good and maintaining territorial integrity and sovereignty. The fact that states are made up of governing institutions, leaders, interest groups and populations makes the realists’ assumption of ‘state’ as a ‘unitary actor’ problematic. Yet, the realists find it ‘analytically productive’ and most sophisticated attempts to conceptualise the international system that have been restricted to the state-centric perspective.\(^{13}\) Sovereign state, as a unitary rational actor remains the key feature in international system and the supplier of ‘political good’ within its boundaries. Such ‘political good’ includes a stable and secure environment to its citizens through enacting binding legislation and exercising coercive force over sovereign territory to maintain law and order. Internally, states derive their legitimacy through public loyalty in exchange of the social contract and the demonstrated capability and willingness to mobilise and employ state resources towards productive

\(^{11}\) Pluralists attempted to dispense the idea of ‘state’ while analysing ‘politics’ and state was characterised as a ‘metaphysical spook’ leading to analysing international relations from a non-state centric perspective. However, the advantage of state over other political entities in mobilising and organising resources ‘has inherently linked politics with state, making the political system little more than a synonym for the state’. See Buzan, *op. cit.*, 1991, p. 61, David Easton, *The Political System: An Inquiry into the State of Political Science*, New York: Alfred A Knopf, 1953 and Migdal, 1988, *op. cit*.


\(^{13}\) Buzan and Little, *op. cit.*, p. 22.
end fulfilling the contract. ‘Structurally’, the summative function of state’s authority, legitimacy and service delivery capacity determines its strength/weakness while ‘relationally’ the intensity and degree at which ‘the idea of state’ can hold and bind the ‘territorial-polity-society package’ defines the strength, character and power of a state in the international system. The dynamic continuum of state weakness and the fact that all states can be weak in some aspects or the other make it problematic to conceptualise state weakness in precise terms.

2.3 Conceptualising State Weakness: Antithesis of ‘Stateness’?

There is no universally agreed definition of weak and collapsed states. The division amongst the scholars originates from the epistemological grounds as they find it difficult to objectively define and analyse the concept with methodological rigour. The concept is also viewed as politicised, ethnocentric, and hegemonic with interventionist connotations. It has been further disjointed as a range of terminologies are used to denote state weakness. Navigating through such overlapping contours and badly fragmented literature, it emerged that state failure may occur in four stages: weak, failing, failed, and collapsed (see figure 1). Thus, the terms ‘weak and collapsed states’ used in this paper are generic within which one might find various stages of state weakness. Weak states – first in the league, are defined as those “where the ability to provide adequate amount of political good is diminished or is diminishing”. Collapsed states – the extreme version of state weakness and the last in the league, exhibit a vacuum of authority, “reducing the state as a mere geographic expression” where the structure, legitimate authority, law, and political order have fallen apart and security is obtained through the rule of the strong and the ‘citizens’ become mere ‘inhabitants’. Collapsed states exhibit institutional failure as opposed to functional failure. For example, Rwanda during the genocide in 1994 is argued to have ‘failed’ not ‘collapsed’ because it was the highly disciplined agents of the state that carried out and persuaded the task of murdering many of its people with hideous efficiency; the state institution was there, but it was just doing the opposite of what it was expected to do. However, cases of state collapse involving extreme disintegration of public

14 While it is possible to measure ‘stateness’ from a ‘structural’ approach alone, the ‘relational’ approach is important as it encapsulates state-society relationship, regional and international pressures, political economy and the interdependence engendered by globalisation, Crament et al., op. cit., p. 79.
16 Crament et al., op cit., p.8 list over 35 such terms ranging from ‘anaemic state’ to “neo-trusteeship”.
17 Although the State Failure Task Force Report uses an absolute transition approach (i.e. stable states disintegrating into a failed state) most researchers conform to the process approach where state failure is gradual. See Tiffany O Howard, The Tragedy of Failure Evaluating State Failure and Its Impact on the Spread of Refugees, Terrorism and War, Santa Barbara: Praeger, 2010, pp. 10-15.
authority is relatively rare. Milliken and Krause cited Liberia, Sierra Leone, Somalia, Congo/Zaire and Albania as examples of collapsed states while Rotberg adds Sudan to the list.

Between the weak and collapsed stages of state failure lie the failing and failed states. Failed states, though a much more uncertain concept, as it ‘begs the question of what the core functions of states actually are’ exhibit flawed institutions, deteriorating or destroyed infrastructure, loss of authority in large section of territory etc. What is perhaps more fundamental is the fact that the crisis of authority, legitimacy and capacity lies at the centre of any conceptualisation and measurement of state weakness (figure 1). Such crises may exist or occur in any state. For example, Japan’s ‘capacity crisis’ to cope with the post Fukushima – Daiichi disaster relegated

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its position in the 2012 Failed State Index. The US and Myanmar looked similar in the face of Hurricane Katrina/Nargis. Again the ‘crisis of legitimacy’ haunts Thailand and Egypt in recent times while the ‘crisis of authority’ has often portrayed countries like Pakistan, the Philippines, and Nigeria as weak state. Weak states, however, do not mean weak power, a distinction more relevant to realist school of thoughts. Weak powers like Singapore, Austria, the Netherlands, and Norway are all strong states; conversely, weak states like Pakistan, Nigeria, and Indonesia are strong sub-regional power. All these contextual and conceptual understandings equip us to examine the realist worldview and situate weak and collapsed states agenda in proper perspective.

3. Realist Worldview and Weak States

3.1 Basic Tenets of Realism

The basic tenet that lies at the heart of the realist worldview is heavily conditioned by power realities. Realists argue that in a world where war cannot be ruled out if conflicts are not settled peacefully, rational states are bound to be concerned with the structure of power in the sense not just of the distribution of military capabilities both actual and potential, but also of the whole web of relationships that would affect what would happen if war actually broke out. Table 1 lists the units, system structure, process and leading norms that shape the normative and political preferences of the realist school of thoughts. Realism, and structural realism in particular, regard the international system as ‘anarchic’ (i.e., absence of any supranational authority) where ‘state’ seeks power and calculates its interests in terms of power. It is this linking of power and the national interest which allow realists to explain national policies and international outcomes.

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24 The incident overwhelmed the government, undermining Japan’s ability to adequately respond to natural disaster and its effects. See, Failed State Index 2012, Washington D.C: Fund for Peace, p. 13.
The concern for power is what puts states at odds with each other as anarchy breeds competition and conflicts — ‘the twin facts of life’. As Waltz opines, “states in an anarchic order must provide for their own security and threats or seeming threats for their security abound. Preoccupation of identifying danger and counteracting them become a way of life.” Such security dilemma in the international arena exists irrespective of the innate lust of power by the state as all parties look for security. Thus, the structure of international system forces states ‘to act aggressively to each other’ and the states try to offset others’ power advantage either by ‘balancing’ or ‘bandwagoning’ creating the balance of power that shapes the international order. Balancing could be internal where state concentrates on building strong economy, military etc. or external where state forms alliance with others to draw on resources. In balancing alliance, a state joins the weaker side to offset the power advantage of other states while in bandwagoning, the opposite is true. But how do these tenets of realism manifest in the weak and collapsed states?

3.2 Nature of Weak States’ (in)Security Dilemma

The anarchy and power interactions in weak and collapsed states are internally oriented with marginal relevance to realist assumptions and the Westphalian system on which it is enshrined. First, as opposed to external context, weak states’ (in)security dilemma originates from within and is often fraught with complex internal and external constraints. For example, apart from the role of Revolutionary United Front (financed by the Liberian leader Charles Taylor) the creation of sobel (soldiers by day and rebels by night) during the civil war in Sierra Leone owes much to such complex interplay of security dilemma where the financially pressed government had to not only trim one third of state employees but also engage the armed soldiers in “Operation Pay Yourself.” The coinciding economic interest and incentives of the Sierra Leone’s military and the rebels under a ‘regional conflict complex’ and ‘opportunity structure’


26 Kenneth Waltz, 1989, op. cit., p. 43.


arguably prolonged the war. One could argue that the domestic anarchy in weak and collapsed states mirrors the realist perception of ‘security dilemma’ in international system. Such comparison, however, is problematic as the ‘interstate anarchy’ is an essential defining condition and attributed to the international structure in which the state must learn to live, while it does not have same priori status within the state. Anarchy within state may disappear once the state gains adequate authority to enforce the rule of law as happened in Sierra Leone once the government with the assistance of United Nation peacekeeping mission succeeded in gaining effective control and legitimacy while the same is not true in international environment. Indeed, the so called “Third World” countries like Malaysia, Taiwan, Singapore, South Korea could successfully graduate from such domestic (in)securities and be integrated into global system and now are very much responsible international players.

Second, realists’ account of security dilemma sharply contradicts the distinctive predatory nature, privatisation of violence, etc. that characterise the civil wars and conflicts endemic in weak and collapsed states. Indeed the sub-state and non-state actors operating in such weak and collapsed environment create a ‘defection from below’ as opposed to the ‘defection from above’ by individual states or alliance challenging the traditional norm of security dilemma. Such defection from below driven by greed and/or grievance motives and devoid of any responsible and rational relationship with the state and international system is often aimed at resource predation and violence. In international arena ‘security dilemma’ requires a responsive relationship while ‘predation’ involves only the action of an aggressor and an unwilling victim. In security dilemma, all actors prefer peace but feel insecure about the intention of their rivals, while the basis of predation is often greed and lust.

Third, the self perpetuating nature of (in)security dilemma in weak and collapsed states oriented towards the regime or elites’ security distorts the idea of national security interest. Owing to its fundamental structure and process of incomplete statehood and constraining external conditions, the idea of national security and interests severely lacks pragmatism and long term vision. As opposed to protecting the states from outside threats, the concept of national security transforms

31 See Philip G. Cerny, “The New Security Dilemma: divisibility, defection and disorder in the global era” in Review of International Studies, No. 26, 2000, pp. 623–646. Philip contends that security dilemma has always been challenged from below and above. However, the ‘defection from below’ has gain new momentum in an era of globalisation. He argues that this may in turn reduce the effectiveness of traditional state-based and state-systemic approaches in the stabilisation of international politics.
WEAK AND COLLAPSED STATES

into regime protection and the state interest becomes ambiguous and confused.\textsuperscript{33} Such fusion of ‘state’ and ‘regime’, resulting into a distorted notion of national security interests defies the realists’ notion of state being a rational actor pursuing national interests. Criminalisation of state, endemic corruption, predation, rent seeking by the elites and powerful etc. undermine government’s legitimacy and transforms it ‘into the prize of political competition’.\textsuperscript{34} States with such traits can hardly be regarded a rational actor and the ‘highest form of human collective’.

3.3 Balance of Power and Weak States

Insofar as the balancing and bandwagoning are concerned – two basic options for the states to achieve balance of power in international system — the case of weak and collapsed states display a rather tenuous link and marginal relevance. Traditionally, strong and strategically important rising states are better poised for the power politics in international system while the fear of what war might bring often holds back the weak states from active balancing and bandwagoning exercise. Yet, it is the weak and collapsed states that are mostly riddled with endemic conflicts and civil wars. Such behaviours need to be understood by deconstructing the actors involved. In weak and collapsed states, primarily it is not the ‘state’ that defects from interstate balances of power, but rather a range of \textit{transnational and sub national actors} operating in the power vacuum of such state that defy the traditional notion of balance of power theory. The traditional means of re-equilibrating the balance is often insufficient and of marginal relevance to integrate these actors, as they are not recognised in the current international system.

Again, the \textit{power vacuum} in weak states draws various external and internal political and economic forces, international crime syndicates, non-state actors, organised crime, shadow economic activities and war entrepreneurs, triggering rebellion and civil wars. Dispensing the balance of power considerations, ‘\textit{doing well out of war}’ is what matters for these war entrepreneur in weak states’ context.\textsuperscript{35} Such endemic trend has prompted (humanitarian) interventions and securitisation of underdevelopment\textsuperscript{36} and a refocus of the developed countries’ national security strategy to address threats from weak and failed states. ‘In the past, most violent

\textsuperscript{33} Allan Collins, \textit{op. cit.}, p. 199.
\textsuperscript{35} As Collier \textit{et al.}, assert, ‘rebellion (in civil war) is motivated by greed, so that it occurs when rebels \textit{can do well out of war}. On the power seeking variant of the predation theory, rebels are motivated by a lust for power, but rebellion occurs only when rebels \textit{can do well out of war}. On the subjective grievance variant of the predation theory, rebels are motivated by grievances, imagined or real, but rebellion occurs only when rebels \textit{can do well out of war}.’ Collier Paul, Hoeffler Anke and Rohner Dominic, \textit{Beyond Greed and Grievance: Feasibility and Civil War}, 2006, Economics Series Working Papers, WPS/2006-10, University of Oxford, UK.
\textsuperscript{36} ‘Securitisation’ refers to the process by which issues are accorded security status or seen as a threat through political labelling, rather than as a result of their real or objective significance.
conflicts and significant threats to global security came from strong states’ writes the United Kingdom National Security Strategy of 2008, ‘currently, most of the major threats and risks emanate from failed or fragile states . . . They have the potential to destabilize the surrounding region.’ While the developed world has stopped fighting, all 36 active armed conflicts recorded in 2009 were intra-state civil wars in the weak and collapsed states. Such an ‘interventionist’ focus on weak states has also been labelled as an attempt to ‘extending West’s external sovereign frontier.’

4. Weak States in International System: Do they constitute a Critical Mass?

Having examined the discord of the realist school of thought in weak states’ context, the next logical question is: do these weak and collapsed states constitute a critical mass to alter the realist view of international system? For some, the qualitative difference between the units of international system represented by the strong states in the Global North and the weak ones in the South arguably splits the international society into two camps — the West and the Rest. Others have contended that an inclusive world society does not yet exist and pictured the global architecture as a ‘bifocal hierarchical international system’ placing the secure, wealthy, developed liberal democracies at the top and the insecure, poor, weak states at the bottom. Such characterisation together with the deepening and widening of security concepts has raised the issue of ‘mutual vulnerability of weak and strong’ making the weak state phenomenon a ‘system responsibility’. Responding to such responsibilities, in 2005 over 150 countries adopted the Responsibility to Protect (R2P) principle later reaffirmed by the Security Council Resolution 1674 to reconcile the twin concerns of ‘state’ and ‘human security’. Notwithstanding the labelling of threats from the weak states as post 9/11 political constructions, the securitisation of underdevelopment and humanitarian interventions under the R2P principles can mobilise exceptional resources and political powers allowing the weak and collapsed states to survive and even flourish (i.e., Sierra Leone, Uganda, Ghana etc.). Such mechanism reaffirms the resilience and continued relevance of realist worldview and confirms that the threats posed by weak and collapsed states are of marginal relevance to maintaining international political order.

Given the realists’ assumption that international system is ‘system-dominant’ with independent structure that ‘constraints the behaviour of states’ also argues in favour of its continued relevance. First, the international system is still

37 See Mark Duffield, op. cit, p.213.
39 As opposed to the ideas enshrined in article 2 (4) and 2 (7) of UN Charter that forbid the threat or use of force by states in their dealing with one another and prohibit UN from interfering in domestic affairs of its member states, the UNSC resolution 1674 sets out the responsibilities of states towards their citizen and the international community’s responsibility in case states struggle or fail to meet their responsibilities: See Collins, op. cit., pp. 361-375.
WEAK AND COLLAPSED STATES

populated by ‘states’ where ‘territoriality’ and claim of ‘sovereignty’ — contingent or otherwise — is still considered vital and suggests that balance of power and the prospect of anarchy and war has not diminished.40 That is why, military alliance like North Atlantic Treaty Organization (NATO) still finds its relevance and inspirations for putting up missile defence and enlargement in Europe41 and the defence expenditure, production of sophisticated weaponry by the peaceful or rough states alike is on the rise.42 Although the ‘democratic peace’ looks promising, Waltz’s counter argument is that ‘the (international) structure will remain anarchic even if all states became democratic’43 and ‘hierarchy’ or ‘anarchy’ remains the most plausible options for international political system.44 In reality though, there are evidences of hierarchy in an overwhelmingly anarchic international system. The hierarchy reinforces super ordinate-subordinate relations while the uneven distribution of power creates poles of power (i.e., uni-polar, bipolar and multi-polar). The recent annexation of Crimea by Russia and the continued instability in Ukraine, tensions in the South and East China sea, apprehensions about China with her rapid military modernisation, dispute between Japan and Russia over Kuril Islands, between Japan and China over Senkaku/Diaoyu, claim by half a dozen countries over all or some parts of the Spratly Islands, strategically located and supposedly rich in oil are some but few that epitomises the potential flash points of the future and are now contained through a regional/ global balance of power, reinforcing the realist worldview of the international system. Notably, none of these ‘game changing’ flash points that hold the potentials of sparking wars involving major powers is the creation of weak and collapsed states.

Global Trend 2030, published by UN National Intelligence Council also suggests that changing calculation of the key player, (i.e., US, China, India and Russia), together with increased resource contestations and a wide spectrum of more accessible instrument of war, will increase the likelihood of interstate wars which may involve nuclear deterrent.45 Thus, despite the rhetoric and increasing appetite for (humanitarian) interventions by the powerful states to address security related issues in weak and collapsed states, the real challenge to the realist worldview still remains with the realm of geopolitics involving great and emerging powers where the weak states have marginal relevance.

40 As Waltz puts it, “The natural state is the state of war. Under the conditions of international politics, war recours; the sure way to abolish war, then, is to abolish international politics”, 2000, p. 8.
42 Global defence expenditure is on the rise again and is estimated to have been US$ 1,339 billion in 2007, representing 45 per cent increase in real terms since 1998. See for details, Collins, 2010, pp. 395-396.
43 Waltz also questions ‘what type of democracy?’ suggesting that ‘illiberal democracies’ do tend to fight each other and the process of transition from autocracy to democracy is most certainly fraught with internal instabilities.
Second, as opposed to powerful strong states, the weak states do not have the power or the political influence to affect the international system not only because of its resilience but also because changes in the structure are distinct from changes at the unit level. Buzan and Little go further suggesting that the international political structure has grown stronger and its effects have become pervasive. They contend that “under pressure from the (international) system, units (i.e., states) become structurally and functionally more alike. Those that fail to adapt disappear or are forcibly remade.” Indeed, state weakness, failure or collapse need not to be pre-ordained or terminal. States can graduate from one stage to the other. For example, Lebanon, Nigeria and Tajikistan graduated from collapsed to weak states while Afghanistan and Sierra Leone graduated from collapsed to failure. Weak and collapsed states in current international system are also balancing their survival drawing alliance under the umbrella of War on Terror. Countries like Pakistan, Indonesia, Saudi Arabia, Uzbekistan etc. mirror such alliance with the United States. Some weak states in Africa have also formed regional alliance like Economic Community of West African States (ECOWAS) and South African Development Communities that have successfully intervened in regional conflicts to ensure the security of their people. More importantly, the United Nations peacekeeping forces are ever more engaged today in building peace and ensuring security in many weak, failed and collapsed states with mixed success.

5. Concluding Remarks

The distinctive self perpetuating insecurity dilemma, blurred concept of national security and interest — transformed into regime protection and elite security — as observed in weak and collapsed states present a counter-dynamic to the notion of a modern state. However, weak states have always been part of international system. But they never constituted a critical mass challenging the realist orthodoxy in international security and order. The current discourse and portrayal of the weak and collapsed states are better explained and understood as a misleading post 9/11 political construction. The antithesis of ‘stateness’ represented by weak and collapsed states and the creeping sovereignty gap might be changing the nature of the state, but their survival and functioning as the basic unit of an international system is hardly in question. Thus, despite adverse political construction and perception, in reality, weak and collapsed states — under the pressure of a resilient international system — continue to zigzag their way through the complicated democratisation process albeit sparking instability and chaos in

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46 Some have even argued that the fall of Soviet Union and the end of the Cold War is also insufficient to falsify the realist account of international order. They argue that it was a mere ‘single data point’ and the fact that the ‘defender’ exhausted in the struggle argues well for the continued relevance of the realist account. See William Wohlforth, “Realism and the End of the Cold War”, International Security, Vol. 19, No. 3, Winter 1994/95, pp. 91-129.

47 Buzan and Little, op. cit., p. 333.

some parts of the world. Indeed, the growing interdependence of the international community, the theory of mutual vulnerability of weak and strong and the R2P principles underline the fact that both weak and strong states will have to ‘swim together’ while some will be ahead but none should be drowned.
Ahmedul Kabir

THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION: STRATEGIC IMPLICATIONS

Abstract

This paper presents the strategic importance and implications of a truth commission in the context of South Africa. The limitations of a transitional democracy throw into relief the transitional circumstances of justice. A politically negotiated truth commission is a preferred mechanism, if not the most, for dealing with politically motivated crimes and human rights abuses. A truth commission builds on the concepts of transitional justice and transitional amnesty, thereby meshes with the concept of the rule of law. A truth commission, in its simultaneous and complementary role to retributive justice, can contribute in settling profound political and social conflicts in a country's history. The paper argues that a truth commission satisfies political, legal and ethical requirements simultaneously in a transitional setting. A truth commission can, to a great extent, resolve tensions between truth, justice and reconciliation and play an emancipator role towards democracy, although it can never guarantee truth, justice or reconciliation as they come up with a mixed package that includes a clear objective of ending violence, attending to social inequalities and individual and social readiness. This paper lays out many positive and negative aspects of a truth commission and suggests why a truth commission has increasing appeal. A truth commission may help to render truth, justice and reconciliation and can serve the causes of democracy as well.

1. Introduction

In recent decades, societies from Latin America to Eastern Europe, from the former Soviet Union to Africa, have overthrown military dictatorships and totalitarian regimes in favour of democracy, in the wake of the fall of former Soviet Union and the end of the Cold War. By 1999, at least twenty comparable truth commissions have functioned in many of these post-authoritarian states. The concept and practice of truth commission seem to be one of the preferred mechanisms, if not the most preferred one, for countries dealing with the legacy

Ahmedul Kabir is member of Bangladesh Civil Service (BCS) of Police Cadre in the rank of Additional Superintendent of Police. At Present, he is serving as a member of the United Nations Stabilization Mission in Haiti (MINUSTAH) on secondment. His e-mail address is: ahmedul.kabir@gmail.com

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of the past atrocities in times of transition from an autocratic or totalitarian regime to a democratic one.

A truth commission has both positive and negative aspects and there are ways of limiting the negative areas so as to maximise its benefits. The positive and negative facets of truth commissions are best captured in the exploration of the tension between truth and justice in the context of moral, legal and political perspectives and in answering pressing questions like: whether a truth commission is proposed as an alternative to criminal prosecution or as a concrete step in the direction towards accountability; whether they are in conformity with the concept of uninterrupted continuation of the rule of law; whether they can achieve the objective of vindicating truth and subsequent reconciliation; what type of political situation warrants the use of truth commission and finally, whether the truth commission is the second best alternative to criminal justice system to deal with past atrocities after transition.

This paper presents a case study of the Truth and Reconciliation Commission (TRC) of South Africa in analysing various arguments for and against truth commissions. The reason for choosing the South African Truth Commission is that it captured the imagination of the whole world. It was established basing upon the tumultuous experiences of some previous truth commissions as well as other forms of transitional justice in some other countries and it has proven to be the best model for truth commissions to date. The paper also refers to some other truth commissions or other forms of justice in other countries where appropriate, in order to articulate the points of discussion in a fulfilling way.

There are five sections. Section one is the introduction. Section two depicts the structure and tasks of a truth commission in the context of political, legal and ethical issues. Section three discusses the contribution of truth commissions to an ever evolving discussion of the concepts of truth, justice and reconciliation. It also explores the question of transitional justice and transitional amnesty from the rule of law and human rights perspectives. The case study of the South African Truth and Reconciliation Commission is presented in section four. Section five is the conclusion.

2. Truth Commission: Structure and Tasks

A truth commission is an officially sanctioned panel that endeavours to establish the facts of human rights violations or a pattern of government abuses under a past regime, but abstains from prosecuting the perpetrators. A truth commission emerges from the tension between the desire to forget the past and not to invite the ire of the powerful wrongdoers and the ethical and political demands to confront the crimes of the earlier regime. A truth commission emerges when a

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settlement is negotiated, not imposed. A truth commission is a mechanism, whereby a new government seeks to establish the legitimacy of its various institutions while simultaneously stating that it is different from the prior regime and is committed to upholding the human rights of the citizens.

A truth commission is a transitory statutory body which is neither legal, nor political nor religious. It stands somewhere between the three main branches of a government; namely, the executive, the judiciary and the legislative, but draws strengths from all three of them. As a general rule, a truth commission should be established as soon as possible after a political transition in order to capitalise on the political momentum and wide public support. A commission’s mandate should be limited for sometime between nine months to two years, in order to again utilise the sustaining public interest, or its aim may lose relevance. A strong civil society can advance the cause of a truth commission. A truth commission has at least five basic aims: namely, to find out, clarify and officially acknowledge past abuses; to answer to the needs of victims; to contribute to justice and accountability; to delineate institutional responsibility and recommend reforms and reduce conflict over the past. A truth commission can investigate abuses both by state forces and by the armed opposition.

A truth commission completes its task by presenting the country with a written and well documented record of facts. It can hold its hearing in public or private. Most commissions are directed to forward their records to prosecutors or courts where they feel that there is evidence. A truth commission and trials can operate at the same time, as is evident from the South African truth commission model.

A truth commission can be established by a presidential decree as in Haiti, Sri Lanka, Chad and Uganda, with little public debate on their terms. Less commonly, but more preferably, the national legislature may create a truth commission like that of the South African model, with stronger powers such as the power of subpoena or search and seizure. Who is selected as a commissioner to run the truth commission is also one of the most important factors in determining the success of the commission. The chair has to have significant personal authority and networks to be able to run the commission effectively. A truth commission can consist of a mix of national and international members, as the commission of Sierra Leone exemplifies.

3 Maier, op. cit., p. 262.
5 Ibid., p. 205.
6 Hayner, op. cit., p. 221.
7 Ibid., p. 24.
8 Ibid., p. 74.
9 Ibid., pp. 10-29.
10 Ibid., pp. 214-218.
3. The Conceptual Underpinnings of Truth Commission

This section delineates the concepts of truth, justice and reconciliation that are keys to an understanding of a truth commission in its various aspects. There are four sub-sections, namely, transitional justice; truth vs. justice; truth and reconciliation and transitional amnesty. It is argued that the innovative concept of transitional justice and transitional amnesty advances the causes of truth, justice and reconciliation in a transitional democracy. It further suggests that transitional justice and transitional amnesty completely conform to the rule of law and human rights principles.

3.1 Transitional Justice

Transitional justice refers to an extraordinary situation where a newly installed democratic country tries to rebuild its political, legal and economic system after emerging from long periods of gross violations of human rights and atrocities under an autocratic regime. The meaning of transitional justice hinges on the crucial question of how to deal with gross violations of human rights of a past autocratic regime in a transitional setting, so that it opens up the future for a democratic society from where there is no turning back. For this, the conception of justice has to be transformative and transitional, thus marking a paradigm shift from the ordinary conception of retributive justice.11

The concept of transitional justice provides for a framework where a truth commission that emerges out of political expediency is seen to be consistent with the rule of law. The value of legal continuity or the rule of law is severely tested during transition. In Germany at the end of the Second World War, the rule of law meant breaking away from the Nazi legal regime through the retrospective justice of the Nuremberg trial in order to restore respect for law and justice. In a post War era, the obvious question is to what extent the rule of law necessitates legal continuity. The continuation of the rule of law is justified in terms of distinctive conceptions of the nature of injustice of the prior regime. The continuity with the prior legal regime is required to restore the belief in the procedural regularity that was missing in the earlier regime. The transitional justice juxtaposes the idealised conception of the rule of law with the extraordinary political context.12

3.2 Truth vs. Justice

Both the truth commission and the criminal justice system play complementary and integral roles in the pursuit of truth and justice. The tension between truth and justice revolves around the question as to whether a truth commission can achieve the objective of justice as trials do. Truth commissions are not equivalent to any judicial

12 Ibid., pp. 10-17.
body or court and should not be deemed a replacement for trials. A truth commission and a trial court operate with fundamentally different goals in mind. A commission does not interfere with or replicate any task of courts.\textsuperscript{13}

Truth commissions should not be seen as a substitute for prosecution or as a second best option even when justice in court is not viable. In many cases truth commissions rather serve as a complement to a very weak judicial system, helping to fill the void created by the system's inaction, incompetence and inability to handle thousands of cases. The purpose of the truth commission seems to strengthen or contribute to justice in courts.\textsuperscript{14}

The goals of truth commissions can range from national reconciliation to advancing healing for individual victims, from ending impunity to building up protection to prevent the temptation to repeat the abuses. These needs born out of transitional circumstances cannot be addressed by court proceedings even if the courts function well and there are no limiting factors on the prosecution of wrongdoers, which is rare.\textsuperscript{15} The main task of the courts is to decide upon the individual responsibility for criminal conducts. They cannot contribute to settling profound political or social conflict in a country's history as truth commissions can do.\textsuperscript{16} Although a commission enjoys limited powers compared to courts, it has a broader mandate to investigate patterns of events in order to enable them to reach conclusions about the society itself which is not possible through trials. The truth commissions are able to outline the full responsibility of the state and its various organs like the military, the police and the judiciary itself. No other state body has the mandate to review the record or the deficiencies of the judiciary.\textsuperscript{17}

The main argument for trials seems to be that they can provide strong retributive justice in terms of reestablishing a balance of pain, albeit imperfectly. It may also be argued that a truth commission can render at least a weak retributive justice by changing the equilibrium of power and status in favour of the victims through public acknowledgment of their pain and by invoking public shame on the perpetrators. A public acknowledgment of suffering can be described as a contemporary form of justice in its own right, whereas strong retributive justice is only relatively strong because nothing can really compensate for murders, deprivation of liberty, torture and other forms of abuses.\textsuperscript{18}

There is a suggestion that a trial can not only provide retributive justice, but also help deter any repetition of abuses in the future. Then a question that inevitably

\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid., pp. 87-90.
\textsuperscript{15} Ibid., pp. 10-16.
\textsuperscript{17} Hayner, op. cit., pp. 10-16.
\textsuperscript{18} Maier, op. cit., p. 268.
comes up is whether it is morally and legally imperative for a new democratic regime to pursue trials in order to address the gross human rights violations. This question brings the temptation to equate reconciliation initiatives with forgiveness. It also tends to ignore that a truth commission provides restorative justice by focusing on a victim-centred approach through reparations and at the same time it is also an effective apparatus to prevent a new democratic government from falling back into the old cycle of rights abuses. The answer to the question above lies in another question: whether it is morally right to risk the existence of a fledgling democracy by preventing the possibility of genuine reconciliation between old enemies. If the objective of trials is deterrence, then under the right circumstances of time and place, a truth commission can be an ethical choice.19

It seems that there is a mutually exclusive political logic and ethical logic at play when it comes to decision-making about whether to pursue criminal justice or establish a truth commission in order to address the human rights violations of a previous government. In fact, both the criminal justice system and the truth commission are part of the same process: they complement and contradict each other but are never autonomous or independent from one another in their implications.20

To turn to more practical aspects, there is no guarantee that the trials are the best means for redressing the wrongs and they cannot be appropriated in all circumstances. Political motivations can pervert the course of law.21 The lack of political will and the resistance shown by the prosecutors and judges in taking up politically sensitive cases are common features in a transitional setting.22 The inherited judiciary from the past regime also lacks independence and has a long tradition of ineptitude and corruption and is usually bereft of material or human resources to handle momentous trials. In these circumstances, the truth commissions can give the courts the precious time that they need to rebuild.23 The successor trial also raises the difficult question of who is the proper subject for trial, considering the involvement of the security forces, the military and the police alongside the politicians in the perpetration of gross human rights violations. The failure of successor trial programmes in Argentina shows how practically the whole army was exposed to potential prosecution, subsequently resulting in a broad pardon and amnesty process.24 However, it is important to explore the issues of truth and reconciliation against the background of transitional democracy.

20 Wilson, op. cit., p. 200.
21 Teitel, op. cit., p. 44.
22 Hayner, op. cit., p. 89.
23 Mendez, op. cit., pp. 4-21.
24 Teitel, op. cit., p. 44.
3.3  Truth and Reconciliation

There is always a suggestive question as to whether a truth commission can uncover the truth and whether truth leads to reconciliation. It also raises a subsidiary question: whether truth and reconciliation can advance democratisation and liberalisation. Moreover, there is a suggestion that pursuing truth can traumatise individuals rather than help those who give testimony in front of the commission to be reconciled.

Firstly, if a truth commission cannot discover the whole truth, it at least succeeds in narrowing the range of tolerable lies. What a commission at least does for victims is give them a compelling public voice. It entails an official admission that the state has committed gross human rights violations in the past and it removes any distant possibility of continued denial of such violations. This official acknowledgement is very important in the context of official denials of deceptive abuses by previous regimes and it could be the first step towards individual healing. A commission may help contribute in making perpetrators accountable without replacing justice in courts.25

The pursuit of truth by a truth commission can be more dangerous and destabilising than that of trials for individuals as well as for communities that have recently returned to peace. Truth inquiries demand an active involvement and emotional engagement from victims as well as from the broader society. It also demands concentration of substantial resources at a point of transition where many urgent priorities may call for attention. None of these could be convincing reasons for not having a truth commission, but they could be reasons for questioning the worth of the truth being told.26 Individuals may have their own responses on how to deal with the gross human rights violations in the past, but a society through its institutional framework has the liberty to go down the path of retributive justice or a truth commission.27 In a sense, it is not a choice between a truth commission and justice but between a truth commission and silence, the silence over the atrocities of a prior autocratic regime. However, it would be fair to say that a truth commission may help to render justice and can play an emancipator role towards democracy, but it can never guarantee either justice or democracy; it can only provide the possibility for them to exist.28

Many argue that trials are preferable to truth commissions, not only because they impart justice but also because they reveal the truth. The fact is that the purpose of trials is not to expose the truth but to make sure that the criminal standard of

25 Hayner, op. cit., p. 29.
26 Ibid., pp. 183-185.
28 Maier, op. cit., pp. 269-273.
proof has been satisfied on a specific charge. A measure of truth may come out in the process, but as will be shown later, the South Africans have seen the limitations of the judicial process in finding out the truth, for example in the case of General Magnus Malan.  

Secondly, to put it simply, an official account and conclusion about the facts allow opposing parties to sit and govern together without conflict and acrimony over the past lies. The word reconciliation is so closely associated with the South African Truth and Reconciliation Commission that one sometimes assumes reconciliation to be an integral or primary purpose of any truth commission. It ignores the fact that true reconciliation rather comes from a mix of packages that may include a clear end to the threat of further violence, a reparation programme, attending to structural inequalities, mechanisms in a society that bring together formerly opposing parties, social and individual readiness, or maybe the passage of time. Establishing truth about the rights abuses, offering an apology and respecting the memory of victims through memorials and other forms of acknowledgement are aspects of reparation and thus the work of a truth commission can be an important part of a full reparation programme. However, no truth commission can fully achieve the aim of accountability and reparation.

3. 4  **Transitional Amnesty**

This section presents the justification for transitional amnesty. The dilemma of whether to grant amnesty or impose criminal justice does not arise in a vacuum but in a transitional context where during negotiation, criminal justice becomes a bargaining chip, with a subsequent agreement to amnesty to pave way for liberalising the political order. The invocation of punishment seems to be the only resort to show forcefully that a regime change has taken place, putting an end to impunity for past atrocities. It suggests that punishment is necessary to restore the rule of law and consolidate democracy. However, it can additionally be argued that restraint in exercising punishment can also signal a return to the rule of law. Moreover, it is not certain either that retributive justice makes a stronger foundation for democracy.

In ordinary times as well, the rule of law does not necessitate full enforcement of law and the reason for granting clemency that includes amnesty and pardon is usually political as well. As such clemency in ordinary times shares common ground

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29 Hayner, *op. cit.*, p. 100.
34 Minow, *op. cit.*, p. 252.
36 Maier, *op. cit.*, p. 274.
with transitional justice in its political aspect. Amnesty, on the other hand, like punishment can show where the political power lies. The waiver of punishment, like its exercise, can define transition. In transitional as in ordinary times, the prerogative to pardon lies in the executive, not in the judiciary. Therefore, although justice is in the realm of judiciary, mercy is in the province of political branches to be exercised freely in furtherance of political aims.\(^{37}\)

On a more practical note, a successor regime’s exercise of power is usually associated with the legacy of the judiciary from the prior autocratic regime that undermines its authority. The exceptional circumstances of successor trials and absence of any legitimate institutions for judgement throw into relief the compromised circumstances of justice in the transitional period.\(^{38}\) The following case study on South Africa’s Truth and Reconciliation Commission superbly embodies the tension between the issues of truth, justice, reconciliation, transitional justice and transitional amnesty in a localised and contextualised transitional democratic setting.\(^{39}\)

4. Case Study on South African Truth and Reconciliation Commission

4.1 Birth of the Commission

South Africa made a transition towards democracy through a negotiated agreement at the end of forty-five years of apartheid in South Africa and thirty years of armed struggle by the African National Congress (ANC) and others. The most contentious issue during the negotiation toward an interim constitution was whether the wrongdoers would be granted amnesty, which the military and the government were asking for. In the final hours of negotiation, the parties involved agreed to a post-amble to the Constitution that allowed amnesty for politically motivated crimes. The South African Parliament passed the Promotion of National Unity and Reconciliation Act in 1995 after hundreds of hours of hearing that gave birth to the Truth and Reconciliation Commission. The mandate of the commission was to investigate the gross violations of human rights like killing, abduction, torture and severe ill treatment, but it did not include all the abusive practices of the apartheid. It investigated politically motivated crimes committed by both the prior autocratic regime and the opposing political parties.\(^{40}\)

The legislation creating the South African Truth Commission prescribed a consultative process for the selection of its members. A selection committee was formed which called for nominations from the public. The selection committee

\(^{37}\) Teitel, \textit{op. cit.}, pp. 51-55.
\(^{38}\) Ibid., p.57.
\(^{40}\) Hayner, \textit{op. cit.}, pp. 40-44.
narrowed down the thousands of nominations to twenty five and then sent them to President Nelson Mandela to select seventeen commissioners finally. President Mandela added two persons who did not go through the selection process in order to provide geographic and political balance.\textsuperscript{41} This kind of transparent and accountable process resulted in the inclusion of some members of the apartheid regime in the commission itself. It was a political decision by President Nelson Mandela that won the hearts of millions.\textsuperscript{42} Archbishop Desmond Tutu, the charismatic Nobel laureate, was the chair of the commission made up of the seventeen commissioners. The commission itself also set a high standard by recruiting members of the military and the police into the commission to take advantage of their knowledge of the inside working of the forces under investigation in spite of the fact that they were the main instruments for human rights abuses during the apartheid.\textsuperscript{43}

\section*{4.2 \textit{Salient Features of the Commission}}

The greatest innovation of the South African Truth Commission was its authority to grant amnesty for politically motivated crimes committed between 1960 and April 1994.\textsuperscript{44} It is the most controversial power of the commission as well although only 568 people were granted amnesty and 5,287 were denied it out of over 7,000 applications.\textsuperscript{45} An amnesty was predicated on the condition that the perpetrators had made a full disclosure of their crimes. There was no requirement to ask for an apology, in order to be granted amnesty which implies that truth is not the price for forgiveness.\textsuperscript{46} In fact, trials and the truth commission in South Africa operated simultaneously and played complementary roles. For example, the trial of General Magnus Malan, Army Chief and later Defence Minister persuaded many perpetrators to come forward and apply for amnesty. In 1996, he was found not guilty despite the continuous airing of allegations against him. Malan volunteered to testify before the commission although he did not ask for amnesty, apparently. At the truth commission, he shared some of his stories whereby some truth has come out that would not have come out without the existence of the truth commission.\textsuperscript{47}

The commission usually held a public hearing and it was open to television and radio broadcasting to keep the whole process transparent. The commission showed respect by making it clear to the victims that it was their choice whether to give testimony in public or private.\textsuperscript{48} The public hearing has achieved one thing in South Africa that few people will now try to defend or justify the widespread repression and

\begin{itemize}
\item \textsuperscript{41} Ibid., pp. 216-218.
\item \textsuperscript{42} Mendez, op. cit., p. 283.
\item \textsuperscript{43} Hayner, op. cit., pp. 216-218.
\item \textsuperscript{44} Ibid., pp. 40-44.
\item \textsuperscript{45} Wilson, op. cit., p. 209.
\item \textsuperscript{46} Hayner, op. cit., pp. 40-44.
\item \textsuperscript{47} Minow, op. cit., p. 251.
\item \textsuperscript{48} Ibid., p. 243.
\end{itemize}
torture that were in practice to keep the apartheid in place.49 However, it is relevant to mention that the South African Truth Commission hired the help of a mental healer professional and provided some training to statement takers to help the victims cope with the process of testimony. The commission also provided regular briefing and debriefing sessions to victims before and after giving testimony respectively.50

The South African commission also named the perpetrators of the wrong doing. It had to follow the due process as it was binding upon the truth commission resulting from a court decision to notify those in advance who were going to be named, so that they could defend themselves before it became public.51 The South African Commission is the only one that went so far as to call for a hearing to analyse the role of judiciary. When the judges declined to participate in the hearing with the exception of one judge, the commission considered issuing subpoenas to bring them to court, but then decided against it. Subsequently, the commission included a narrative on the judiciary.52 In South Africa, a small number of cases of sexual assault were reported to the commission compared to the widespread practice of rape at the hands of security forces that were known to have taken place. The commission was well aware of this limitation and mentioned it in its report. The South African Commission dedicated a whole chapter of its report to describing its battle to obtain access to files that were either destroyed or withheld.53

The South African Truth Commission forwarded detailed recommendations for reparation programmes, including financial, symbolic and community development programmes. The commission made cash payments to the accounts of the victims or their survivors. The reparation was open only to those who testified before the truth commission, but there is a suggestion that it should be open to all victims irrespective of whether they testified or not. The commission made it very clear to the testifiers from its inception that it was cash strapped and that it would be impossible for it to make significant monetary reparation. Therefore, although most of the testifiers were very poor as a result of apartheid, in many cases they requested a small amount of money, only for tombs or some memorials.54

4.3 Retrospective Justice in South African Model

This section explains why the issue of amnesty was given priority over the question of retrospective justice. In South Africa, apartheid was legal. Endless injustices were perpetrated by successive apartheid regimes between 1948 and 1990 under the aegis of law. South Africa was a pariah state because of its human rights

50 Ibid., pp. 139-153.
51 Ibid., pp. 40-107.
52 Ibid., p. 104.
54 Hayner, op. cit., pp. 170-172.
records. In spite of the fact that apartheid was an international crime, there was no initiative from the United Nations to bring the perpetrators to justice. By 1994, there was no justification to establish an international tribunal, because by then South Africa was perceived to be no longer a threat to international peace. There were two convincing factors for keeping the injustices of the apartheid itself out of the mandate of the truth commission. First, the South African government wanted to show that they were not engaged in a victor’s justice. Second, the government was determined to maintain the rule of law without dealing with the offensive laws retrospectively.55

The South African Commission was challenged by the survivors and the families of the victims, who demanded justice in the form of prosecution or civil actions. In fact, the constitutionality of amnesty was challenged in the post-apartheid constitutional court in 1996. The court held that the post-amble to the 1993 Constitution stipulating for amnesty took precedence over the specific clause on Bill of Rights. The truth commission inherited this limitation of amnesty as built-in but nevertheless, it advanced causes of truth and justice within these limitations in good faith.56

4.4 Limitations

This section points out some more limitations that may have implications for reformation of future truth commissions. South Africa’s Truth and Reconciliation Commission found it very difficult to document and represent the truth in the course of its short existence. It was also very demanding on them to carry out intensive investigations into very sensitive issues of the day when the commission had to fairly represent the stories of thousands of victims.57 Due to the great numbers of testimonies taken and the limited time and resources available, the truth commission could only delve into serious investigations in a very small number of cases. Most of the thousands of testimonies were recorded exactly as reported by the deponent but never had been looked into in-depth.58 However, there are suggestions that during data processing and also due to legalistic language, it was sometimes difficult to translate individual expressions, traumas and stories into words.59 Despite these limitations, there are strong suggestions that South Africa’s Truth and Reconciliation Commission was unequivocally successful in fulfilling its mandate of incorporating the nature and scale of human rights abuses into national history.60

56 Mendez, op. cit., p. 11.
57 Ibid.
58 Hayner, op. cit., pp. 7-26.
59 Saunders, op. cit., p. 53.
There are suggestions that the psychological or therapeutic support given to the testifiers before or after testimony as arranged by the commission was inadequate. There is an argument that the inadequacy, if any, has to be measured against the then general existing poor mental health system across the country. Moreover, any individual trauma has to be contextualised with the “extreme chronic stress” associated with the apartheid era. Besides, the nature and scale of memory of trauma is highly dependable on both individual characteristics of testifiers and different cultural nuances. Therefore, the right perspective is to see a truth commission as a part of, rather than a substitute for any comprehensive and ongoing therapeutic intervention for individual survivors. As Minow rightly contends that by identifying individual suffering in the social context rather than depicting it as private experience, a commission rather can help individual survivors understand their trauma better in some cases. Finally, for transnational transfer of practices and institutions in creative ways, the deeply contextual circumstances of South Africa’s Truth and Reconciliation Commission has to be taken into account.

5. Conclusion

A truth commission is a politically expedient mechanism for transitional countries moving from an autocratic or totalitarian regime to a liberal democratic one through a negotiated compromise. A truth commission marks a decisive break between the prior abusive regime and the new democratic government. A truth commission gives an official acknowledgement by the state that it committed gross violations of human rights earlier and issues an official apology; it also expresses the new government’s commitment to promote human rights of its people in the future and offers hope for a stable democracy, although it cannot guarantee so. It also achieves some form of justice and accountability for the atrocities committed in the past to some extent, though it can never fully achieve either of them.

A truth commission proceedings and a report may help individuals and the society at large to comprehend to some extent the abusive pattern of past atrocities. A truth commission is never intended to be an alternative to the criminal justice system; rather it complements and contradicts the other while they are not autonomous from each other. A truth commission is in its own right offers a very suitable option for dealing with past rights abuses in transitional circumstances and it explains why there is a growing trend for adopting a truth commission in a transitional period. The theory

61 Saunders, op. cit., p. 55.
63 Ibid.
64 Ibid.
65 Ibid.
66 Minow, op. cit., p. 246.
A truth commission excels when it is empowered by the will of the people and is supported by the civil society. The personality and preferences of the commissioners composing the commission also play an important role in how successful a commission will turn out to be. A commission is mandated for a short period to ride on the political momentum and public support. A commission created by a legislative act rather than a presidential decree gains more legitimacy in the eyes of the people. An open public hearing process is also valuable in its own right. Moreover, a commission report can put an end to conflicts over the past lies, it points out institutional responsibilities including those of the military, police and the judiciary and it recommends reform programmes for them. A commission also slowly helps restore people’s belief in various state organs. In addition, it gives the new government the necessary response time to rebuild various democratic institutions. A truth commission advances the causes of truth and reconciliation as well. The truth telling process may cause pain to individuals, but a democratic society has the liberty to decide whether to pursue truth and reconciliation for a better future.
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