

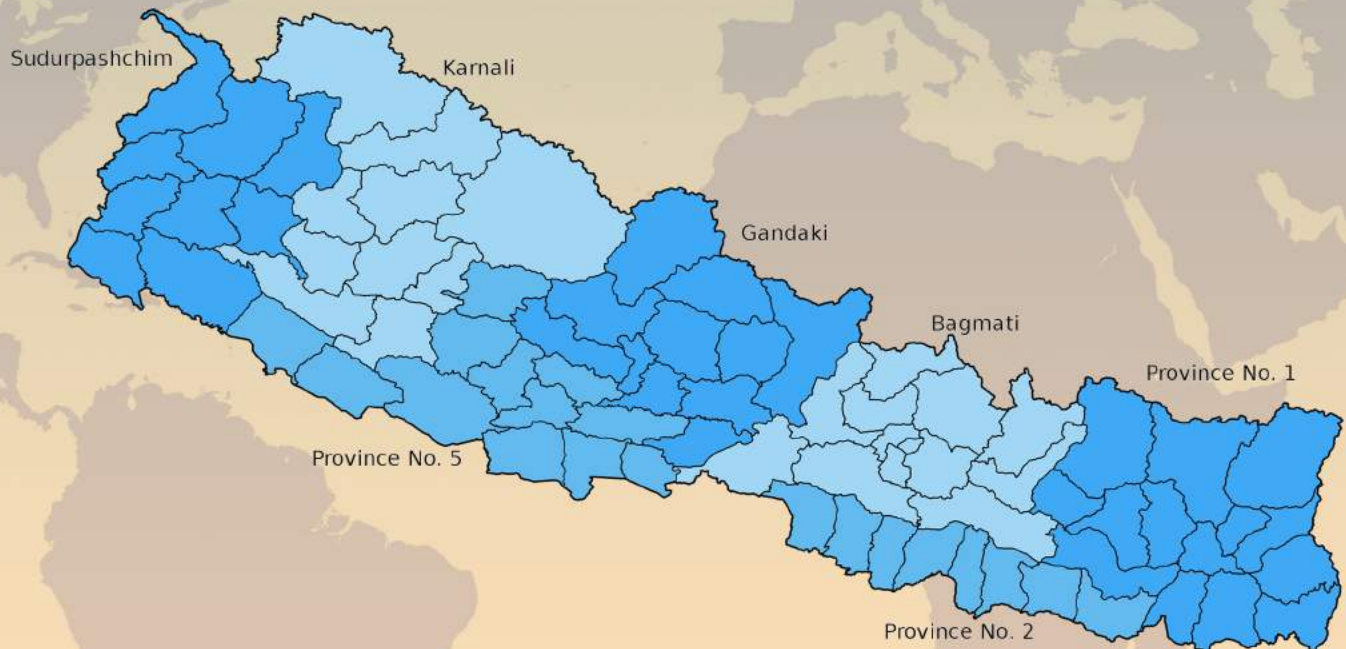


"For Nepali, By Nepali"

**NON-RESIDENT NEPALI ASSOCIATION
NATIONAL COORDINATION COUNCIL, USA**



THE BORDER DISPUTES BETWEEN NEPAL AND INDIA



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The Border Disputes Between Nepal and India

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1. Current situation

Of the 1,880 km (1,168 miles) long common border between Nepal and India, Nepal's 23 districts have border issues with India in 71 places that includes 606 sq. km. (Bhattarai and Conway 2021). According to the records, conflicts at 69 places are solvable at the local levels (Shrestha 2020; Giri 2020; News Desk 2020), but the Kalapani, Limpiyadhura, Lipulekh (herein after referred to as **Kalapani region**) and Susta have been the major issues.

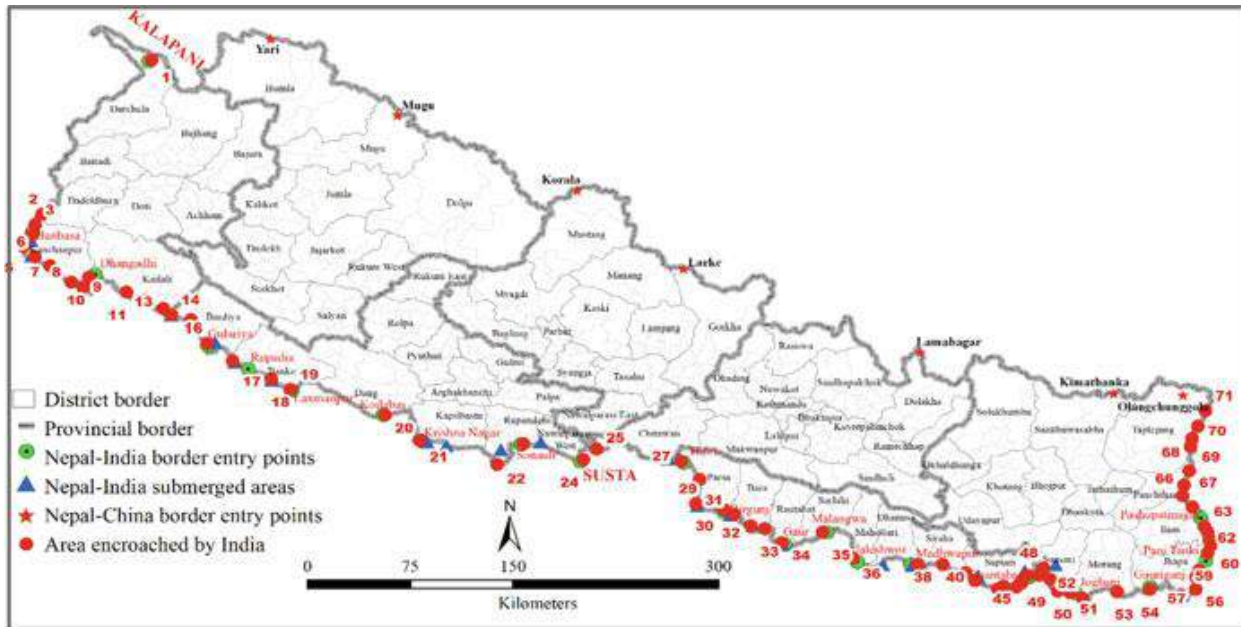


Fig. 1.1 Map showing disputed border locations between Nepal and India

Nepal claims over the Kalapani region based on the following reasons (Suvedi 2020):

- a. The Sugauli Treaty of 04 March 1816 at the end of a two years (1814 to 1816) long war that limited Nepal's border between Mechi river in the east and the [Maha]kali river in the west (Gupta 2020).
- b. The Naya Muluk Treaty of 1860 (Baral and Pyakurel 2013; Roychowdhury 2020 a-b);
- c. The supplementary treaty of 1875 (Baral and Pyakurel 2013)
- d. Other multiple evidence include:
 - i. Five maps produced between 1819 and 1894 by British India that show headwater of [Maha]Kali at Limpiyadhura

- ii. A letter written by Nepal's PM Chandra Shamsher to Village Chiefs of Kalapani Region in 1904 (Roychowdhury 2020a-b; Suvedi 2020);
 - iii. Collection of voter list by Nepal's Election Commission in 1958
 - iv. Nepal's national census of 1961 conducted by Nepali authorities in the Kalapani region.
 - v. Permissions granted by Kathmandu's permission to 17 Indian Check Posts (1952 to 1969) along Nepal China border, 16 of them withdrawn but Kalapani still exists (Cowan 2015).
- e. Susta border issue arises because the Narayani river meanders its course and Nepal has lost 104 sq. km area.

2. From 1962 to till today

From 1960s-till today India has been occupying over 365 sq. km of Nepal's Kalapani region. Erstwhile Nepali Prime Minister Matrika Prasad Koirala granted the establishment of 17 Check Posts including the check post located in the Kalapani region (Cowan 2015; Post Report 2020). These check posts were established on 9 June 1952 following the Nehru's doctrine of considering Nepal's northern mountains as the defense barrier for South Asia. These 17 check posts remained there until 21 November 1969 (Cowan 2015). When all 16 check posts were removed by 21 November 1969, the check post in the Kalapani region remained as it is. According to the informal sources, the check post of the Kalapani region was not removed as per the green nod from King Mahendra. Some sources claim that King Mahendra granted the area of the Kalapani region to appease India. Though there is no published records to justify this fact, speculations are that Nepal needed to maintain good relationship with India because many prominent leaders of the Indian establishment, who were good friends of B. P. Koirala were unhappy with the unceremoniously removal of B. P. Koirala's elected government by King Mahendra within 1.5 years of 5 years terms. The repercussion has been long-lasting and the Kalapani region has become too contentious issue today (Gupta 2020). Since the major goal of the Kalapani region was to block the Chinese intrusion in South Asia (Baral 2017; Gupta 2000; Sukumaran 2008). Now its importance has increased further for security, pilgrimage, and trade purposes.

3. The Post multi-party-democracy period

Soon after the multi-party democracy of Nepal in 1990, Nepali Prime Minister Mr. G. P. Koirala during his first visit to India signed the Tanakpur treaty in December 1991 with the Indian

Government led by P. V. Narasimha Rao. First, Koirala and his close associates argued that it was an understanding but not a treaty. However, when further investigated, it revealed that this agreement needed to be ratified by the Nepali parliament because it involved the massive uses of water resources. Conflict arose between the ruling Nepali Congress Party and opposition parties. Finally, the case went to the Nepali Supreme Court. The Nepali Supreme Court has ruled that the government's so-called understanding with India on the Tanakpur Barrage was a treaty that needed to be ratified by the Nepali Parliament.¹ G. P. Koirala became PM of Nepal for the second time in 1998. He visited India in 1998 at the capacity of PM. Dismayed by his first mistake of signing the Tanakpur Treaty in 1991, GP Koirala this time raised the issues of the Kalapani region very strongly with Indian PM Atal Bihari Vajpayee. Probably, Koirala did it to lessen his defamation due to the Tanakpur treaty. Since then succeeding PMs of Nepal raised the issues of the Kalapani region with India. Agendas after agendas were repeated on the border issues; each meeting ended with the conclusion that this issue will be discussed at the foreign secretariat level until resolved; however, no solution has been found yet. With no achievement, the Kalapani issue became too complex, and India continued adding more and more infrastructure to support the modern military in the Kalapani region. These developments and India's unilateral actions on the Kalapani region made the situation too complex.

4. Unilateral move from India

On 15 May 2015, China and India signed a treaty to make Lipulekh (Qiangla/Quiangla) a bilateral trade point to promote mutual trust through border trade and pilgrimage (BusilessLink 2018; TET 2015; Giri 2020; Government of India 2015; Gupta 2020; Karki 2020b). The Sushil Koirala government of Nepal strongly protested in writing with China and India (Bhattarai 2020; TET 2015). On 8 November 2019 a cartographic aggression occurred when India included the

¹. Under the treaty, signed in December 1991, Nepal agreed to provide 2.9 ha of land to India for tying the 577-meter left bund of the barrage to the high ground on the Nepali side. India would provide up to 4.24 cubic meters per second (cumecs) of water to irrigate about 5,000 ha of land in Nepal on a perennial basis. India also agreed to supply 10 million units of electricity from the Tanakpur power station to Nepal free of cost as a "goodwill" gesture, an amount that was increased to 20 million units when Indian Prime Minister P V Narasimha Rao visited Nepal in October 1992 (Bhattarai and Jain 2015).

Kalapani region within its territory while revising Indian-administered Kashmir into Jammu, Kashmir, and Laddak (DW 2020a; DW 2020b; Ghimire 2020; Giri 2020a). Nepal protested for the assumption of "irreconcilable headwater position" of [Maha]Kali river (3,600 meters elevation)" at Lipulekh instead of Limpiyadhura based on cartographic aggression" (Anupam 2020; Ethirajan 2019; Giri 2019). The problem further amplified on 08 May 2020 after the Virtual Inauguration of a new 80-km long road connecting Dharchula to sacred Mount Kailash Mansarovar of Tibet by Indian defense minister claiming this road is built within the Indian territory (Mulmi 2020; Muni 2020).

4. India's persuaded interpretation vs. Nepal's disagreement

India persuaded that the recently constructed 80-km road is the quickest link between Delhi and Kailas. This road is not only for Indian, but pilgrims and tourists originating from Nepal can use the improved infrastructure to safely visit the Kailash Mansarovar region. However, Nepal disagrees with Indian persuasion arguing that at least 17-km of the road is within the Nepali territory that was constructed without the consent of Nepal (Giri 2020a).

On 21 November 2019, displeased Nepal with the unilateral construction of road by India on Nepali land sent diplomatic notes to India seeking a peaceful solution to the border tension (Neupane 2019). As India did not heed with Nepal's plea, on 11 May 2020, Nepal sent another diplomatic note to India (The Wire Staff 2020). Many contradictory messages came to media from India and Nepal, one is blaming the other of showing unwillingness to engage in border talks (Gupta 2020; Giri 2020b).

Amid these tensions, on 22 May 2020, Nepal's Foreign Ministry summoned Indian Ambassador in Kathmandu urging for a bilateral meeting as scheduled since the 1990s (Giri 2020b). Yet, Nepal experienced New Delhi's dilly-dying for bilateral meetings citing Covid-19 (Post Report 2020; Ethirajan 2020). Virtual meetings could have been the possible avenues for discussion despite Covid-19 pandemic (Post Report 2020), and India and China have been utilizing such a platform despite the prevalence of Covid-19 (Karki 2020b; The Wire Staff 2020a).

5. Nepal actions angers India

Being frustrated from India's no response (Post Report 2020), on 18 May 2020, Nepal's cabinet decided to include the Kalapani region on Nepal's map (Paudel 2020), and on 13 June 2020 Nepal amended the Constitution of 2015 and published a revised map including the Kalapani

region (Anbarasan 2020; Cowan 2015; Dawn 2020; Pradhan 2020; Scroll Staff 2020). Nepal's total area changed from 147,181 to 147,516 sq. km. (Bhattarai and Conway 2021; Shrestha 2020)

While addressing the Nepali Parliament after the ratification of newly revised map and amendment of the constitution of 2015 unanimously, Nepali PM Oli's sarcastic expressions on Indian national emblem "Satyamev Jayate" (truth prevails) or Singhameya Jayate (Lion conquering over minors) (Roy and Ghimire 2020) and "Indian virus" being more dangerous than Chinese virus (Ghimire 2020) angered India. India further reacted arguing that the artificial enlargement of map abusing historic fact violates current understanding of boundary issues and prescheduled meetings at the secretariat level. India further argued that Nepal's cartographic aggression is the sole reflection of Nepal ruling political party's internal conflict to a nationalistic posture at the behest of China (DW 2020a; PTI 2020; Express Web Desk 2020; Xavier 2020).

6. India suspects Nepal being pro-China

India continued expressing its displeasure with Nepal after Nepal released a revised map including the Kalapani region. India blamed Nepal of adding more pains on India at a time when India is facing border problems with its northern neighbor—China, especially, the tense military standoff between India-China at Doklam and Laddhak area of Kashmir. At the Laddhak area, India lost many soldiers in the border skirmish with China. Furthermore, India blamed Nepal of power playing with China to damage India's oldest democratic traditions (Aljazeera 2020). India also expressed unhappiness for various anti-India mobs in the Kathmandu Valley, especially, around the Indian Embassy (Giri 2019; Pandey 2020; Roychowdhury 2020a-b; Subramanian 2020). India feels its oldest democracy being challenged by the heavy presence of autocratic China in South Asia with economic packages through the Built and Road Initiatives (BRI). Nepal is illusioned to roping support to China and planning to internationalizing the issue at the United Nations to tarnish India's international image (Tandan 2020).

China's influence in South Asia is increasing rapidly; for examples, the huge investments in The Maldives, Myanmar, China-Pakistan economic corridor, Sri Lanka, and the Belt and Road Initiatives (Xinhua 2018). Indian news has insulted Nepal's Prime Minister K. P. Sharma Oli at a very low level (Yanqi 2020; ZeeTV 2020). India tried twisting the fact and reported fake news of China occupying Nepal territory in the Humla district, which Nepal government refuted (MoFA 2020), and Kantipur has apologized for the publication of this false news (Kantipur 2020). Accordingly, Nepal has banned a few Indian News Channels (Giri and Neupane 2020). Formal

talks between the countries stopped for many months. There were rumor that India would not talk to Nepal with the government of K. P Oli. At the meantime, intra-party conflicts escalated in the ruling Communist Party of Nepal.

As the accusation and counter blames between Nepal and India were on the rise, a sudden twist appeared in the Nepali politics. The initiative was taken by the Nepali PM K. P Oli to break this impasse. He made two phone calls to Indian PM Modi on two occasions: a) 15 August 2020 on the Indian Independence Day (NDTV 2020) and b) 17 September 2020 while wishing the Indian PM Modi on his 70th birthday (Delhi Herald 2020).

With these developments, formal talks between the two neighbors started. Accordingly, three visits happened from India in 2020: a) 27 October: Chief of Indian Research and Analysis Wing (RAW) Samant Goel as a special envoy of PM Modi met Nepali PM KP Oli between 9.00-12.30 pm at his official residence (The Print 2020); b) on 04 and 05 November, Indian Army Chief MM Naravane² visited Nepal to get an Honorary General title of the Nepal's Army (THT 2020); and c) between 26 and 27 November, Foreign Secretary Harsha Bardhan Shringala visited Kathmandu to attend the foreign secretariat level meeting (Karki 2020).

These developments indicate India's realization that sooner the issue is settled with Nepal, the lesser the chances for China to get involved. Over 40,000 Nepali Gurkha soldiers are part of 40 battalions of the Indian army, it might be in the interest of India to keep Nepal in its confidence (Bhattarai 2020; Muni 2020; THT 2020). Additionally, people-to-people ties between the nations are exemplary (Muni 2020). Furthermore, Nepal is the 7th largest remitter to India annually sending \$3.2 billion (CSLM 2015). On the trade front, Nepal is the top border-trading partner among India's six neighboring nations of Bhutan, Bangladesh, China, Nepal, Pakistan, and Myanmar (Tripathi 2019). India's trade surplus with Nepal is in the billions of dollars and Nepal's trade with India is much bigger than with China (Xinhua 2018). When Nepal and India have such deep relationships at the people-to-people level, it is time to explore the root cause of the boundary problem and find an amicable solution for good.

². Earlier, Indian Army Chief Naravane earlier blamed Nepal working at the behest of China (Baral 2020; DW 2020a; PTI 2020), but later he expressed his apology.

7. The root cause of the border dispute

By the second half of the 18th century, the East India Company (EIC) wanted to extend its trade with Tibet. The shortest and viable route at that time was through Awadh (Butwal-Palpa) and EIC began expanding its territories northwards. As EIC started its activities in the Awadh region, border disputes started between Nepal and EIC. The British considered Nepali as the major hurdle to a trade access to Tibet. On 1 November 1814, the British declared a war on Nepal. In 1815, the British General, Sir David Ochterlony evicted many Nepali from Garhwal and Kumaon region of British-India. Nepal lost the war with British-India. A year later, the war ended with the signing of the Sugauli treaty shrinking Nepal in today's position. Nepal was forced to give up western and eastern territories, surrendered the entire western Tarai and to accept a permanent British representative (or 'resident') in Kathmandu.

As the trade with Tibet was considered beneficial, after 1857, the East India Company apparently realized the strategic significance of the Kalapani region to trade with Tibet (Subramanian 2020). British officials started to publish maps which referred to Lipulekh pass as the origin of the [Maha]Kali river – then misnamed Mahakali as Kali river (Manandhar and Koirala 2001; Roychowdhury 2020). Geographically, Lipulekh is a trijunction point of India, China and Nepal. It has been an entrepot since ancient times by traders, mendicants and pilgrims traveling to Mansarovar. Geographic facts prove that Mahakali river originates from Limpiyadhura and forms the border between Darchula district in the current Sudurpashchim Pradesh province, and the Indian district of Pithoragarh in Uttarakhand state. However, India argues that the border between Nepal and India should be the ridge lines of Om Parvat, but Nepal disagrees. The lack of proper records of the Sugauli Treaty and cartographic aggression after 1857 by the British-India created a favorable situation to British-India. This situation created confusion on the origin of the [Maha]Kali river (Bhandari 2020).

8. Cartographic aggression created confusing situation

Since no approved map was attached with the Sugauli Treaty, EIC created a confusing situation through cartographic manipulation on the origin of the [Maha]Kali river (Manandhar and Koirala 2001). Until 1857, all maps produced by British cartographers show Limpiyadhura as the origin of the [Maha]Kali river. Between 1857 and 1881, deliberate attempts were made to misname the river [Maha]Kali river as Kali river after realizing the importance of Tibetan trade. To create further confusion, in the 1870s, British India conducted regular surveys of the upper reaches of the

river Kali and produced a vintage map in 1879 showing the Kalapani region as part of India. The Indian government argues that the 1879 map should be considered in deciding the borders between the two countries, but not the maps that were produced before that are held up by Nepal (Sharan 2000). No matter how India tries manipulating the name of [Maha]Kali river in the area that was earlier accepted as the boundary (Gupta 2000), the Mahakali river is still there. It is not possible to change the geography of the Kalapani region. Inconsistent and unsubstantiated statements will deteriorate Nepal-India relationships (Giri 2020c) through cartographic confusion.

One of the weaknesses of Nepal is its ignorance of the Kalapani region from 1961 to 1997 (Leo Rose 1998). The importance was realized only after the issue of Tanakpur agreement that happened during the premiership of G. P. Koirala of Nepal. G. P. Koirala's government failed to raise the main issues of the origin of Mahakali while signing the treaty of Tanakpur. Further research were done between 1990 and 1998 on the origin of Mahakali river.

During his second visit to India in the capacity of a Prime Minister, G. P. Koirala in 1998 first raised the issue of the origin of Mahakali river and the cartographic aggression made by India since 1857 with the Indian PM Atal Bihari Bajpayee. Nepal government contended that the western border of the country must be shifted 5.5 km westward to coincide with the borders as per the Sugauli treaty (article 5, 1816). India objected this claim arguing that Indian revenue records dating back to the 1830s show that the Kalapani region has traditionally been administered as part of the Pithoragarh district, India (Roychowdhury 2020b; Sharan 2020; Muni 2020). The records presented by Nepal fully refutes this Indian claim. For example, a letter written by Nepal's PM Chandra Shamsher to Village Chiefs of Kalapani region in 1904; Nepali government collecting of voter list in 1958; Nepal's national census of 1961 conducted by Nepali authorities in the Kalapani region; and permissions granted by Kathmandu to establish 17 Indian Check Posts (1952 to 1969) along Nepal China border, of which 16 of them were withdrawn, but the check post in the Kalapani region still exists (Cowan 2015). These evidences clearly show that the British-India has claimed Nepal's territory through cartographic aggression and this trend has been carried over by the successive Indian governments. This is the major confusing point for border dispute at the the Kalapani region.

9. Susta

Susta territory is an area of Nepal's East Nawalparasi district of Gandaki province and it is near Nichloul, Uttar Pradesh of India. Around 140 sq. km area is under dispute in this area. This

disputed area is controlled by the Indian Government. The Joint Technical Level Nepal-India Boundary Committee (JTLNIBC) set up in 1981 submitted a report in 2007 for ratification by both the countries. The survey team identified missing pillars along the borders. The report by JTLNIBC has not been ratified yet.

10. Concluding remarks

With political good will, India-Nepal border issues appear to be easily solvable. Demarcating the entire India-Nepal boundary, and speedily executing the work of boundary maintenance will mitigate further border issues between India and Nepal. As a largest democratic country, India must take initiative to resolve border tension with Nepal and win the hearts and minds of the Nepali people as Modi did in 2014 in his first visit to Nepal (Modi 2014). As Nepal and India are seeing some positive gestures in the resumption of dialogue after a long deadlock that was created due to a “cartographic aggression”, (Ghimire 2020) it is time to move ahead to resolve the border dispute. The most appropriate way would be to withdraw Indian military forces from Kalapani and hand over occupied territories back to Nepal. If India becomes reluctant to return the Kalapani region because of the increasing security concerns, potential trade, and safe pilgrimage/tourism to Mansarovar, India may take this area on lease for a certain period or provide a substitution for this area or to provide Nepal a permanent access to the Bay of Bengal. Negotiating based on historical facts and evidence has no alternative. The largest democracy in the world should not hesitate to seek an amicable solution.

Weakening relationships between the geographically interlinked two neighbors of South Asia does not help to sustain the contemporary environment. Nepal and India not only share cultures and socio-demographic and economic relationships, but also, they are tied with ecosystem services. Nepal serves as the upper watershed and India as the lower catchment. In other words, both countries are linked together biogeographically and hydrologically. If it rains in Nepal, India gets the flood, and if Nepali land becomes drier, it affects Indian agriculture. The border dispute between the two countries must be resolved diplomatically. Both countries should consider all three—maximalist, middle, and bottom-line—diplomatic approaches, and there must be give and take in the negotiation. As John F Kennedy once said “Let us never negotiate out of fear, but let us never fear to negotiate,” both countries should have free and fair dialogs and resolve the border issues diplomatically. Neither Nepal desires to confront militarily with India nor does it desire to go to the International Court of Justice. If Nepal and India do not work together, the situation may

invite external forces into play, which will irreparably damage the South Asia's contemporary environment and ruin the geographically tied ecosystem services between Nepal and India.

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