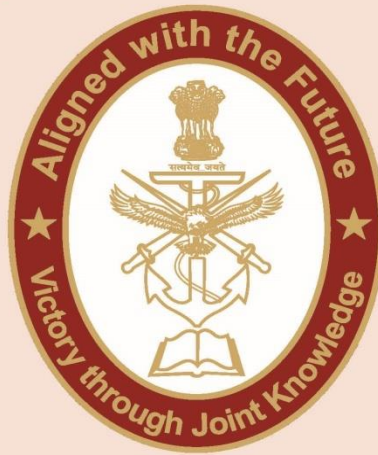


CENTRE FOR JOINT WARFARE STUDIES



CENJOWS

**ON SHARED
SOVEREIGNTY,
INDEPENDENT FLAG &
CONSTITUTION-THE
NAGA TALKS
DEADLOCK**



Maj Gen PC Nair, AVSM, YSM, ADG Adm & Coord has commanded his battalion in Assam, and Siachen Glacier. He commanded a Brigade in Manipur and was IG Assam Rifles in Nagaland. He has also served in the DIA.

Introduction

The Naga issue also termed as the oldest insurgency post the World War II, is still alive and awaiting a final settlement. In recent years, the Framework Agreement signed between the Government of India (GoI) and the National Socialist Council of Nagalim - Issac Muivah (NSCN-IM) in Aug 2015 set the tone and aroused hopes for a final resolution of the issue. A couple of years later, in Nov 2017 six other Naga groups under the designation of Naga National Political Groups (NNPGs) were taken on board for talks with the GoI nominated interlocutor Shri RN Ravi (currently the Governor of Nagaland). Subsequently in Jan 2019, a breakaway faction of the National Socialist Council of Nagaland – Khaplang (NSCN-K) under Khango Konyak also joined the NNPGs as the seventh group. Talks have been in progress since these developments. The GoI currently is in a parallel mode negotiating with the NSCN-IM and the NNPGs. The Naga society within and outside Nagaland awaits the end of these talks hoping that perhaps this

would lead to a road to peace and development, finally. For far too long, the Naga society has been scarred by violence, poverty and underdevelopment.

The major obstacle for settlement of the Naga issue however remains the NSCN-IM which has dug its heels over its demand for a separate Constitution and a Flag, with a passing hint thrown in at times about integration (of Naga inhabited areas) and sovereignty. The GoI through RN Ravi has made it clear that none of these is acceptable, while the NSCN-IM says that these are non-negotiable. Herein also lies the rub because not much is being spoken or written about what the Naga society feels about this impasse. Ground reports clearly suggest that the common man, particularly in Nagaland is extremely disillusioned with these talks and want a settlement that should be final. Insofar as support for NSCN-IM, it is waning and waning grossly in the Naga society. It has now come to a point where the Nagas of Nagaland feel that NSCN-IM under Muivah has held the Naga issue hostage for almost two and a half decades and the time has come for the GoI to think well beyond the NSCN-IM demands in the larger interests of the society. The vicissitudes of the constantly changing demands of the NSCN-IM have shown that inking a final Peace Deal will be a laboured effort.

Integration, Sovereignty, Flag and Constitution

The four issues that the NSCN-IM is hankering for (as stated earlier) are integration, sovereignty, flag and a Naga constitution. Supporters of the NSCN-IM have been referring to Article 3 of the Indian Constitution that gives the Centre the power to form a new State, increase/diminish the area of any State or alter the boundaries of any State. By extension they are alluding to altering the boundaries of the States of Assam, Manipur and Arunachal Pradesh to pave the way for the formation of Nagalim (a larger pan-Naga state). Carving out the Naga inhabited areas from Arunachal Pradesh, Assam and Manipur would be unacceptable to these states, hence unthinkable. Besides, even though there are many Nagas in the neighbouring Sagaing region of Myanmar, it is common sense that these Nagas can never be integrated with the pan-Naga state (Nagalim) that the NSCN-IM is trying to create. Today, therefore, integration would mean a

quasi-state that recognises the socio-cultural heritage of the Nagas with no executive or judicial powers and that would be bereft of forced inclusivity of the Naga areas of Myanmar. Nagalim, however, will remain an emotive, yet impractical supra-state.

The Framework Agreement of Aug 2015 spoke of shared sovereignty and it is necessary to understand what this term means. For the Indian State it has always meant a form of federal structure that exists between the centre and all other states of India (obviously under the Indian Constitution). Muivah, and NSCN-IM however, have been emphasising on the fact that shared sovereignty meant that the Nagas would exist as a different nation with a separate Constitution of their own.

Sovereignty & Shared Sovereignty

The Oxford dictionary defines sovereignty as *the state of being a country with freedom to govern itself or complete power to govern a country*. Thus, sovereignty, the most widely recognized institutional arrangement for the contemporary state existence system, creates an inescapable paradox. One of the core norms of sovereignty is that each state is autonomous and independent; each has the right to determine its own domestic institutional arrangements. One state does not have the right to intervene in the internal affairs of another. At the same time, the domestic authority structures of a particular state can threaten the core interests of others, including their security interests¹.

So shared sovereignty would mean that two states have complete freedom to govern themselves, yet their sovereignties would be shared or interlinked in some way. This may sound dichotomous to many. The definition that seems closest to explain shared sovereignty is by Jorge Emilio Núñez, in his research paper on 'Shared sovereignty in a two State Concept' in which he says that 'shared sovereignty' exists in situations in which there is one sovereign State (usually a weak one) and an international organisation or another State 'helping' it in one way or another. In this case, shared-

¹ Krasner Stephen D. , The Hole in the Whole: So The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law, Michigan Journal of International Law, Vol 25, Issue 4

sovereignty entities are created by a voluntary agreement between recognised national political authorities and an external actor such as another state or a regional or international organization. Moreover, such arrangements can be limited to specific issues areas like monetary policy or the management of oil revenues.²

Some Naga scholars (read NSCN-IM supporters) have gone to ridiculous lengths to define shared sovereignty. One of them has said that shared sovereignty would include (a) Separate constitution, (b) Separate flag, (c) Separate parliament, (d) Separate judiciary, (e) Separate President and Prime minister, (f) Separate national Anthem, (g) Dual citizenship/separate passport, (h) Separate currency, (i) Separate UN representation, (j) Separate embassies, (k) Separate service cadres and intelligence, (l) Joint defence and military, (m) Joint external affairs and communications, and (n) All necessary constitutional arrangements.³ This is tantamount to nothing but 'procrastination' as stated recently by Shri RN Ravi. Clearly, NSCN-IM and its cohorts have been trying to go beyond their brief or what is there for the taking.

Contemporary Shared Sovereignty Models & Applicability for the Naga Issue

An example of shared sovereignty is the arrangement negotiated for the Chad-Cameroon pipeline, between the two governments and the World Bank. The arrangement includes both the development of oil resources in Chad and the pipeline that will carry this oil through Cameroon to the Atlantic. The lead oil company on the project, Exxon Mobil, and its partners, were anxious to involve the World Bank. This was not so much because the project required additional funding from the World Bank, but rather because the companies feared that they would be criticized for violating human rights and environmental principles were they to become heavily invested in Chad and Cameroon, two countries with extremely poor governance and human

² Jorge Emilio Núñez, Shared sovereignty in a two State context: a problem of distributive justice, 2012

³ Shimrah Kharingyo Henry, Shared Sovereignty between India and Nagalim, The Sangai Express 04 Mar 2016

rights records.⁴ It may thus be noted that the sovereignty in this case is for a specific purpose, that is, development of oil resource.

Hong Kong offers another example of shared sovereignty. China wanted formal control over Hong Kong. At the same time, it also wanted international recognition of Hong Kong, not wanting to undermine Hong Kong's economic dynamism. China thus had to reassure both Chinese and foreign investors that the basic economic rules of the game would not be changed after the British left. To achieve this, China allowed Hong Kong to continue to exercise international legal sovereignty, by keeping its seat in the WTO and other international organizations, issuing passports, enforcing its own customs procedures, concluding visa agreements with other states, and establishing foreign economic missions. In addition, the judicial arrangements for Hong Kong engaged external authority sources and foreign (Commonwealth) judges. Arrangements for the judicial system were explicitly spelt out in the 1984 Joint Declaration describing the conditions under which the British would relinquish its authority claims. The Hong Kong Court of Final Appeal could call on foreign judges from common law countries to sit with the Court and could refer to precedents from common law countries in reaching decisions.⁵

East Timor, Kosovo, and Sierra Leone provide another set of examples of the role of international judges, although the motivations and mechanisms were quite different from those that led the Chinese government to create a version of shared sovereignty for Hong Kong. In all these countries, mixed tribunals were established that included both national and international judges. In East Timor and Kosovo, these tribunals, which William Burke-White has referred to as semi-internationalised, were initially created by a United Nations transitional authority that exercised executive power.⁶

⁴In the 2000-2001 Freedom House ratings, both countries were rated as not free for both political rights and civil liberties. Freedom House, Table of Countries: Comparative Measures of Freedom, at <http://www.freedomhouse.org/research/freeworld/2000/table1.htm>

⁵ Krasner Stephen D. , The Hole in the Whole: So The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law, Michigan Journal of International Law, Vol 25, Issue 4

⁶ William W. Burke-White, A Community of Courts: Toward a System of International Criminal Law Enforcement, 24 MICH. J. INT'L L. 1 (2002)

The clearest example of shared sovereignty as stated above is offered by Sierra Leone. In Sierra Leone, the Special Court was established through a formal treaty between the government of Sierra Leone and the United Nations. The Court is charged with prosecuting war crimes and crimes against humanity, as well as crimes under Sierra Leonean law dealing with the abuse of children and wanton destruction of property.⁷

If we contextualise and see whether any of these models bears semblance to the India-Naga impasse, it is clearly seen that none of these do nor can be replicated. The shared sovereignty concept for the Indo-Naga issue essentially means where both have individual identities yet are complementary. Besides, a lot of ground has been covered since 14th August 1947, when the Nagas declared their own independence. The Nagas of not just Nagaland, but even those in the neighbouring states of Assam, Arunachal Pradesh and Manipur are so well integrated with the Indian nation-state that today thinking of a different Naga nation, is preposterous, to say the least. Recently, Shekhar Gupta, the editor-in-chief of The Print said in his programme 'Cut the Clutter' that, "under the Indian Constitution, every state in India has shared sovereignty. In the federation, every citizen of India shares that sovereignty and that is how it was explained to them (NSCN I-M). So, if anybody thinks that India will create a second sovereign structure for a couple of million (Nagas), nobody promised them that (and) this is really just an attempt of shifting the goalposts."⁸

An Independent Flag & Constitution

Muivah's demand that there can be no final settlement to the Naga issue without a flag and constitution may sound sacrilegious to most Indians, particularly in the wake of the abolition of Articles 370 and 35A in J & K. Some even say that these are theatrics by the NSCN-IM or tactics to delay the final settlement. However, gauging by the series of interviews being

⁷Statute of the Special Court for Sierra Leone arts. 2-5 (Aug. 14, 2000) at <http://www.sierra-leone.org/specialcourtstatute.html> (last accessed May 8, 2004) (on file with the Michigan Journal of International Law).

⁸Gupta Shekhar, Delay in Naga Peace Process is Intentional and Suits NSCN(I-M) Chief Muivah, 22 Aug 2020

given by Muivah and other ranks of NSCN-IM, they seem steadfast in their resolve, at-least for now. For many Nagas, a flag is symbolic of Naga pride and they would not want to compromise on it. The Naga flag incidentally has a blue background, representing the sky; a red, yellow and green rainbow arches across the centre. The Star of Bethlehem adorns the top left corner of the flag. The Naga flag itself was first hoisted in 1956. A woman of the Rengma tribe, one of the tribes under the Naga umbrella, was commissioned to weave the flag and was hoisted for the first time in Parashen in Rengma on March 22, 1956.⁹An independent flag seems farfetched and out of touch with current ground realities. Notwithstanding, a Naga flag for purely socio-cultural purposes, essentially to address the aspect of Naga pride, may well be agreed to by GoI. That flag would not be meant for showcasing the Naga nationhood, but for displaying the Naga cultural identity.

Insofar as the Constitution (Yezhabo) is concerned, the devil lies in the details. The Yezhabo was first articulated in 1980 during the formation of the NSCN, and subsequently endorsed by NSCN-IM in 1988 and 1996. It speaks of a complicated body: an "Independent Sovereign Christian Socialist Democratic Republic". As per the Yezhabo, the Ato Kilonser (Prime Minister, Muivah in this instance) will be the Chief of a pan-Naga organisation that would get created. Obviously, this would entitle Muivah to have total control over the Naga areas which includes control over the land, economy and resources. This not just contradicts Article 371 A but is against the very tenets of the Naga society, where the control over the land and its resources is by the people. This kind of total control by Muivah will never be acceptable to Nagas in Nagaland, Arunachal Pradesh, Assam, or for that matter even in the hills of Manipur (barring Ukhrul district).

The Overarching Influence of Muivah and Why the Status Quo Befits NSCN-IM

⁹ Roy Esha, Explained: History of Naga flag and how significant it has been earlier and now, Indian Express 02 Nov 2019

It is a well-known fact that the presence of Muivah casts a long shadow on the Naga peace process and his demands are protean. It is his overbearing personality that many say has stopped NSCN-IM from ending the impasse. Besides, the NSCN-IM under him is known to renege on their assurances. Muivah is also known to scuttle peace deals when they are at the verge of being finalised. He first did it in 1966, as the General Secretary of NNC. He next almost made the 1975 Shillong Accord irrelevant by saying that he did not agree with the peace accord (the reason ostensibly was that at that moment, some of his supporters were on their way to China for training and procurement of weapons). And when in Oct 2019, the Nagas and much of North-east waited with bated breath for the Naga Peace Accord to be finally signed, NSCN-IM backtracked and began their demands for a Flag and Constitution, afresh. All other Naga groups under the banner of Naga National Political Groups (NNPGs) however were ready to ink the Peace Accord.

It is thus fair to conclude that the status quo befits the NSCN-IM. They understand that inking of a Peace Accord would amount to:-

- (a) An end to their illegal taxation (something that the NSCN-IM cadres have been indulging in for over 40 years and has made their senior cadres millionaires)
- (b) Closure of their camps in Nagaland and Manipur
- (c) Deposition of their weapons with Indian state authorities.
- (d) Ousting of the Manipuri Nagas from Nagaland (predominantly the Tangkhul Nagas who form the nucleus of their leadership).
- (e) No certainty of absorption of their militant cadres into the Indian Army/ Paramilitary/ Police (as being demanded by them).
- (f) No guarantee of their civil cadres getting important political designations.
- (g) Less likelihood of Nagas outside Nagaland getting greater political and executive autonomy.
- (h) Retaliation from other groups against whom they have been applying their heft and
- (j) Loss of face amongst the Nagas for not having achieved anything substantial.

The Apple of Discord Between the NSCN-IM and NNPGs

The inking of the final Peace Agreement would be largely dependent on meeting of ground between the NSCN-IM and the NNPGs. The NSCN-IM in a form of aggrandisement feels that they are the original and true representatives of all Nagas and it is with them that the GoI has been in talks for almost two and a half decades. Further they have called the NNPGs traitors of the Naga cause on several occasions. The NNPGs on their part have also condemned the NSCN-IM. “After twenty-three years of political talks, when a negotiator declares that Nagas do not accept the union of India or the Indian constitution, it could only mean political dialogue was a circus exercise for personal gains. The much-touted Framework Agreement of 2015, by the very utterance, becomes invalid,” asserted N Kitovi Zhimomi, convener, NNPGs.¹⁰ This was at the heels of an interview of Muivah to a media house where he claimed that Nagas did not accept the Union of India and there would be no settlement without a separate Naga flag and Constitution.

The NNPGs have been ready to sign the Final Agreement since Oct 2019. They agree that issues like the Flag and Constitution can be negotiated later. The NSCN-IM’s unaccommodating demand for the Flag and Constitution now not only comes as a roadblock to the final settlement, but also has angered many Nagas.

The Existing Reality

One of the important issues that often gets mentioned is that there are so many vociferous stakeholders fighting for the Naga cause that the voice of the common man gets muffled. All that the common man is looking at is peace and economic development. Simultaneously, the NSCN-IM seems to have lost its legitimacy it once had. The Nagas of Nagaland are open in their condemnation of Muivah and NSCN-IM. It is here that the recent remarks of SC Jamir, the former CM of Nagaland sound significant, which in a way makes the NSCN-IM demand sound hollow. Mr Jamir recollected that

¹⁰ Yhoshu Alice, Naga Groups slam NSCN (IM) on Peace Talks, back Political Solution, Hindustan Times, 21 Oct 2020

some important issues were accepted by NSCN-IM during signing of the Framework Agreement in Aug 2015, which he said were: -

- (a) *GOI recognises the uniqueness of Naga history*—It meant that the formation of Nagaland state was reflective of recognising the uniqueness, in Article 371 A of the Constitution).
- (b) *GOI recognises the delicate issues*— It meant that there are issues that are sensitive to both India and the Nagas. It is hence that the GoI never made the clauses of the Framework Agreement (also called as the competencies) public, as opposed to the NSCN-IM that went public with it in Aug 2019.
- (c) *Acceptance of contemporary political realities.*- In 2012, Muivah himself had said that India and Myanmar were sovereign countries and thus integration of Naga areas of the two countries was not possible. So, to raise the bogey of integration now is preposterous.
- (d) *There was no mention of flag, constitution or integration by NSCN-IM during signing of the Framework Agreement*- It is only in recent times that the NSCN-IM is highlighting these issues.

Mr Jamir also went on to add that when Phizo (often called the father of the Naga nation) led the Naga independence movement, he never made any mention of a flag and constitution since these are the attributes of a sovereign independent country. Mr Jamir also stated two especially important things; one was that the 16-point Agreement (of which he is the only living person of the 21 signatories) was discussed and finalised with the GoI in just three days (compare this to the talks that the NSCN-IM has been having with the GoI for 23 years now), the second was that the NSCN-IM does not consult the people prior to their talks with the GoI (they only try imposing their views). Besides, in Jan 2020, Mr Jamir had also said that in their mistaken and often comforting belief of complete knowledge and factual consciousness, people (read NSCN-IM) were perilously inclined to apply distorted logic, analyse half-cooked information and draw faulty conclusions on matters that require incredibly detailed and meticulous understanding and scrutiny.¹¹

¹¹16 Point Agreement maligned by vested interests: Ex-Nagaland CM SC Jamir, Deccan Herald, 27 Jan 2020

Conclusion

For the Nagas, sovereignty, as an independent nation is unlikely to happen and the Nagas have all come around to accept that reality. A Naga flag, purely for socio-cultural purposes, may still be acceptable to India. This is because the settling of the Naga issue is particularly important for India in its policy for the North-east. Not only is it the fountainhead of insurgency in the North-east, but for its Act East Policy, a peaceful Nagaland and Manipur are quintessential; both these states have been facing the brunt of the Naga disturbance for exceedingly long. In the times to come, our focus towards the Indo-Pacific region is also likely to increase, for which the Naga inhabited regions in the North-east would form the land bridge. Clearly therefore a stable and secure environment is a facilitator that both GoI and states of the North-east would look forward to.

Disclaimer: Views expressed are of the author and do not necessarily reflect the views of CENJOWS.