

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Boundary disputes between India and Pakistan relating to the interpretation of
the report of the Bengal Boundary Commission**

26 January 1950

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PART I

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12 and 13 August 1947**

Decision of 26 January 1950

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Décision du 26 janvier 1950

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I

By the Indian Independence Act, 1947, as from August 15th, 1947, two independent Dominions were set up in India, to be known respectively as India and Pakistan. According to Section 2 (2), it was provided that the territories of Pakistan should be *inter alia* the territories which, on the appointed day, were included in the Province of East Bengal, as constituted under Section 3. It was laid down in this section that the Province of Bengal, as constituted under the Government of India Act 1935, should cease to exist and that there should be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal. The boundaries of the New Province of East Bengal should be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor General in that behalf, and the expression "award" should mean, in relation to boundary commission, the deci-

sions of the Chairman of that commission contained in his report to the Governor General at the conclusion of the commission's proceedings.

The Commission, known as the Bengal Boundary Commission, was constituted by the Governor General on June 30th, 1947. The Commission presented to the Governor General the following two reports dated the 12th and 13th August, 1947, respectively:

REPORT OF THE BENGAL BOUNDARY COMMISSION

To

His Excellency the Governor General.

1. I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal, and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report.

2. The Bengal Boundary Commission was constituted by the announcement of the Governor General, dated the 30th of June, 1947, Reference No. D50/7/47R. The members of the Commission thereby appointed were

Mr. Justice Bijan Kumar Mukherjea,

Mr. Justice C. C. Biswas,

Mr. Justice Abu Saleh Mohamed Akram, and

Mr. Justice S. A. Rahman.

I was subsequently appointed Chairman of this Commission.

3. The terms of reference of the Commission, as set out in the announcement were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.”

We were desired to arrive at a decision as soon as possible before the 15th of August.

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission. I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings, the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties concerned propounded

the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows: —

- (1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?
- (2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulti rivers, upon which the life of Calcutta as a city and port depended?
- (3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference?
- (4) Could the district of Khulna usefully be held by a State different from that which held the district of Jessore?
- (5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Malda and Dinajpur?
- (6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent. of the whole in the case of Darjeeling, and to 23.08 per cent. of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal?
- (7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent. of the whole, but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself?

9. After much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provoked no controversy on either side; but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of our discussions that I had no alternative but to proceed to give my own decision.

10. This I now proceed to do: but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

11. I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river systems, which are of importance to the life of the province: but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible.

NEW DELHI;
The 12th August, 1947.

Cyril RADCLIFFE

The schedule
(See Annexures A and B)

ANNEXURE A

1. A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where that boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Rajganj; the Thanas of Pachagar and Rajganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Bihar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal, but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2. A line shall then be drawn from the point where the boundary between the Thanas of Hariपुर and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Parganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with regard to the Districts of Darjeeling and Jalpaiguri, the remainder of the Province of Bengal shall belong to East Bengal.

3. The line shall run along the boundary between the following Thanas:

Hariपुर and Raiganj; Hariपुर and Hemtabad; Ranisankail and Hemtabad; Pirganj and Hemtabad; Pirganj and Kaliganj; Bochaganj and Kaliganj; Biral and Kaliganj; Biral and Kushmundi; Biral and Gangarampur; Dinajpur and Gangarampur; Dinajpur and Kumarganj; Chirirbandar and Kumarganj; Phulbari and Kumarganj; Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Panchbibi.

4. From that point the line shall run along the boundary between the following Thanas:

Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamairhat; Tapan and Dhamairhat; Tapan and Pathnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

5. The line shall then turn south-east down the River Ganges along the boundary between the Districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The District boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

6. From the point on the River Ganges where the channel of the river Mathabhanga takes off the line shall run along that channel to the northernmost point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

7. From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur; Gangani and Karimpur; Meherpur and Karimpur; Meherpur and Tehatta; Meherpur and Chapra; Damurhuda and

Chapra; Damurhuda and Krishnaganj; Chuadanga and Krishnaganj; Jibannagar and Krishnaganj; Jibannagar and Hanskhali; Meheshpur and Hanskhali; Meheshpur and Ranaghat; Meheshpur and Bongaon; Jhikargacha and Bongaon; Sarsa and Bongaon; Sarsa and Gaighata; Gaighata and Kalarao; to the point where the boundary between those thanas meets the boundary between the districts of Khulna and 24 Parganas.

8. The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal.

REPORT OF THE BENGAL BOUNDARY COMMISSION
(SYLHET DISTRICT)

To

His Excellency the Governor General.

1. I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the Indian Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2. The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August, 1947, with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows:—

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

“In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.”

3. After the conclusion of the proceedings relating to Bengal, the Commission invited the submission of memoranda and representations by parties interested in the Sylhet question. A number of such memoranda and representations was received.

4. The Commission held open sittings at Calcutta on the 4th, 5th and 6th days of August 1947, for the purpose of the hearing arguments. The main arguments were conducted on the one side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues; and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the Commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place at New Delhi.

5. There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words “the adjoining districts of Assam” as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our

terms of reference was the correct one and that the "adjoining districts of Assam" did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6. It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act, 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7. We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors, I am glad to adopt this view.

8. The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do.

9. In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made.

10. Out of 35 thanas in Sylhet, 8 have non-Muslim majorities; but on these eight, two—Sulla and Ajmiriganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas comprising a population of over 5,30,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which, one, South Sylhet, comprising a population of over 5,15,000 people, has in fact a non-Muslim majority of some 40,000; while the other, Karimganj, with a population of over 5,68,000 people, has a Muslim majority that is a little larger.

11. With regard to the District of Cachar, one thana, Hailakandi, has a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Karimganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi; and in the sub-division as a whole Muslims enjoy a very small majority being 51 per cent. of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the Sub-division of Hailakandi, comprising a population of 1,66,536, from the Province of Assam to the Province of East Bengal.

12. But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness of the whole District, not only would the six non-Muslim thanas of Sylhet be completely divorced from the rest of Assam if the Muslim claim to Hailakandi were recognised; but they form a strip running east and west whereas the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13. In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows:—

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Barlekha, and then along the boundary between the Thanas of Karimganj and Beani Bazar to the point where that boundary meets the River Kusiya. The line shall then turn to the east taking the River Kusiya as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14. For purposes of illustration a map* marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

NEW DELHI;
The 13th August, 1947.

Cyril RADCLIFFE

Certain disputes arose out of the interpretation of this report, generally known as the Radcliffe Award.

By special agreement concluded on December 14th, 1948, at the Inter-Dominion Conference held at New Delhi the two Dominions agreed as follows for the settlement of these Disputes: —

(1) A tribunal should be set up at as early a date as possible and not later than January 31st, 1949, for the adjudication and final settlement of the following boundary disputes arising out of the interpretation of the Radcliffe Award and for demarcating the boundary accordingly: —

(A) East-West Bengal disputes concerning—

- (i) the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal); and
- (ii) that portion of the common boundary between the two Dominions which lies between the point on the River Ganges where the channel of the River Mathabhanga takes off according to Sir Cyril Radcliffe's award and the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

(B) East Bengal-Assam disputes concerning—

- (i) the Patharia Hill Reserve Forest; and
- (ii) the course of the Kusiya River.

(2) The Tribunal shall consist of three members as follows: —

One member nominated by each of the two Dominions of India and Pakistan, such person being one who is holding or has held high judicial office and a Chairman who is holding or has held high judicial office and is acceptable to both Dominions. In the event of disagreement between the members, the decision of the Chairman shall be final in all matters. The Tribunal shall report within three months from the date of its first sitting.

* Not attached.

(3) After the Tribunal has adjudicated upon the disputes, the boundaries shall be demarcated jointly by the experts of both Dominions. If there is any disagreement between the experts regarding the actual demarcation of the boundary *in situ*, such disagreement shall be referred to the Tribunal for decision and the boundary shall be demarcated finally in accordance with such decision.

(4) The Tribunal shall prescribe the procedure to be followed for adjudicating upon the disputes as well as for deciding the point or points of disagreement, if any arising from the demarcation of boundary.

According to the agreement the cost of the Tribunal and of implementing the agreement contained in paragraphs (1), (2) and (3) above other than that of the staff normally employed by the two Governments should be borne equally by both Dominions.

II

Pursuant to section (2) of the said Agreement the Governments of the two Dominions nominated as members of the Tribunal, the Government of India The Hon'ble Chandrasekhara Aiyar, retired judge of the Madras High Court, and the Government of Pakistan the Hon'ble M. Shahabuddin, judge of the High Court at Dacca in East Bengal. The two High Contracting Parties nominated as Chairman The Hon'ble Algot Bagge, former member of the Supreme Court of Sweden.

By Special agreements in November 1949, between the Government of the two Dominions it was settled that the Tribunal thus composed should be deemed to have been set up in terms of the Delhi agreement of December 14th, 1948, that the Tribunal should open its proceedings at Calcutta and that it should sit part of the time at Calcutta and part of the time at Dacca, the Headquarters of the Tribunal being wherever it is sitting for the time being. It was also agreed that the sittings at Calcutta and Dacca should be for approximately equal periods. All arrangements for the sittings at Calcutta should be made by the Government of India and those for the sitting at Dacca by the Government of Pakistan.

On December 3rd, 1949, the Tribunal held an informal meeting in the Great Eastern Hotel at Calcutta and, acting pursuant to the provisions of the Inter-Dominion Agreement of 1948, established the necessary rules for the procedure. It was decided—

- (i) that the Tribunal would be known as "The Indo-Pakistan Boundary Disputes Tribunal";
- (ii) that the hearings concerning East-West Bengal disputes should take place at Calcutta and the hearings concerning East Bengal-Assam disputes should take place at Dacca;
- (iii) that the hearings should be open to public, the Tribunal reserving to themselves the right to make exceptions to this rule;
- (iv) that the Tribunal should hear oral arguments by Counsel of each Party, in the dispute concerning the boundary between the district of Murshidabad and the district of Rajshahi, the

Indian Government beginning and the Pakistan Government replying; in the dispute concerning the River Mathabhanga the Pakistan Government beginning and the Indian Government replying; in the dispute concerning the Patharia Hill Reserve Forest, the Indian Government beginning and the Pakistan Government replying and in the dispute concerning the course of the River Kusiara, the Pakistan Government beginning and the Indian Government replying;

- (v) that the procedure should be informal; and
- (vi) that the proceedings should be recorded by the Secretary-General appointed by the Tribunal, a full shorthand report being also made.

The tribunal appointed as Secretary-General to the Tribunal the Hon'ble G. de Sydow, judge of the Court of Appeal at Stockholm.

The hearing took place in the West Bengal Legislative Assembly Buildings at Calcutta from December 5th until December 16th, 1949, and in the Legislative Building at Dacca from January 4th until January 12th 1950. The Government of the Dominion of India was represented by Sri S. M. Bose, Advocate-General, West Bengal, Bar-at-Law, assisted by Messrs. M. N. Ghosh, Bar-at-Law, M. M. Sen, Bar-at-Law, K. Bagchi, Advocate and K. K. Sen, Pleader. The Government of the Dominion of Pakistan was represented in Calcutta by Mr. W. W. K. Page, K.C., Bar-at-Law, assisted by Messrs. Fayyaz Ali, Advocate General, East Bengal, and Meshbahuddin, Advocate, and in Dacca by Mr. Fayyaz Ali, assisted by Messrs. Mansur Alam, Advocate, and Meshbahuddin, Advocate.

Oral arguments were presented on behalf of the Government of India by Sri S. M. Bose and on behalf of the Government of Pakistan by Messrs. Page and Ali.

An official report of the oral proceedings was prepared by the Secretary-General to the Tribunal. Also a complete shorthand report of the hearings was made under the supervision of the Tribunal and the Parties. When closing the hearings on January 12th 1950, the Chairman stated that the decisions of the Tribunal would be delivered to the two Governments in writing within about one month's time from that date.

III

The tribunal having carefully considered the cases, oral arguments, documents and maps presented by either side and finding a local inspection in Dispute II unnecessary, makes the following decisions:

DISPUTE I

The dispute concerns the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the

thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal).

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix I.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The district boundary on the date of the Award must be ascertained and demarcated. If this is impossible, the midstream line of the river Ganges and the land boundary will be demarcated within one year from the date of the publication of this Award.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix II.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The construction put by Pakistan on the Award in connection with this dispute is correct and reasonable and the boundary in this area, except over the Rampur-Boalia Char is flexible and not rigid and the boundary line shall run along the course described in the Pakistan statement of the case, subject only to such geographical variations as may result from changes occurring in the course of the river Ganges.

The Chairman opines as follows: —

(See Appendix III.)

The conclusion of the Chairman is as follows: —

In the area in dispute the district boundary line, consisting of the land boundary portion of the district boundary as shown on the map Annexure "B" and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the Award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the Award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

Having regard to the fact that the two Members have disagreed in their views and that the Chairman has agreed with Mr. Justice Chandrasekhara Aiyar, and giving effect therefore to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following: —

Decision

In the area in dispute the district boundary line, consisting of the land boundary portion of the district boundary as shown on the map Annexure "B" and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the Award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the Award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

DISPUTE II

The dispute concerns that portion of the common boundary between the two Dominions which lies between the point on the river Ganges where the channel of the river Mathabhanga takes off according to Sir Cyril Radcliffe's Award and the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix IV.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

(a) Sir Cyril's line in the Award map (Document No. 72) showing the bhanga river in red ink is to be adopted as the boundary.

(b) If this is not possible, the river Mathabhanga shall be taken as that which commences from the loop of the Ganges as found in the congregated air map (Document No. 164) and the boundary shall be along the middle line of the main stream from the point of the said off-take to the northernmost point where the line meets the boundary of the thanas of Daulatpur and Karimpur; the off-take point of the river as now demarcated shall be connected by a shortest straight line with the point nearest to it on the midstream of the main channel of the river Ganges. The centre line shall be a rigid boundary and demarcated accordingly as on the date of Sir Cyril's Award or, if this is found impossible, as on the date of this decision.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix V.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The boundary line in this case is a fluid boundary and not a rigid one, and it shall run on water along the course described in the statement of the case of Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga.

The Chairman opines as follows: —

(See Appendix VI.)

The conclusion of the Chairman is as follows: —

The boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the Award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-eastern most point of the boundary line in Dispute I, this point being a fixed point.

Having regard to the fact that the Members have disagreed and that the Chairman has disagreed with both of them and giving effect, therefore, to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following: —

Decision

The boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the Award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-eastern-most point of the boundary line in Dispute I, this point being a fixed point.

DISPUTE III

The dispute concerns the Patharia Hills Reserve Forest.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix VII.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The portion to the west of the forest boundary line as drawn by Sir Cyril Radcliffe, Document No. 184, and shown in white in India's index map, Document No. 185, shall belong to East Bengal but the rest of the forest lying to the east of the said line shall belong to Assam.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix VIII.)

The conclusion of the Chairman is as follows: —

The boundary line delineated on the map of the Award accords with the description given in the Award, and that line shall be the boundary line in this area and the portion of the forest to the west of that line, *i.e.*, the portion shown in white in the index map shall be awarded to East Bengal (Pakistan) and the portion to the east of the line, *i.e.*, the portion shown in blue in the index map to the Province of Assam (India).

The Chairman opines as follows: —

(See Appendix IX.)

The conclusion of the Chairman is as follows: —

The line indicated in the map "A" attached to the Award is the boundary between India and Pakistan.

Now, therefore, in view of the unanimous conclusions of the Chairman and the Members, the Tribunal gives the following: —

Decision

The red line indicated in the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947, is the boundary between India and Pakistan.

DISPUTE IV

The dispute concerns the course of the Kusiya river.

Mr. Justice Chandrasekhara Aiyar opines as follows: —

(See Appendix X.)

The conclusion of Mr. Justice Chandrasekhara Aiyar is as follows: —

The line drawn by Sir Cyril Radcliffe from the north-western corner of the Patharia Hills Reserve Forest up to the point "B" in the Award map (Document No. 342) is the correct boundary line.

The line BC in the Award map is correctly shown as the Kusiara river and will constitute the boundary between East Bengal and Assam.

Mr. Justice Shahabuddin opines as follows: —

(See Appendix XI.)

The conclusion of Mr. Justice Shahabuddin is as follows: —

The boundary in this area shall run along the southern river, *i.e.*, the river wrongly described as Sonai in the Award map, from the point where the land boundary running from the south to the north meets the said river, to the point from where that river takes its waters through Noti Khal from the northern river, *i.e.*, the river named on the said map as Boglia, and thence along the latter river to the boundary between the districts of Sylhet and Cachar.

The Chairman opines as follows: —

(See Appendix XII.)

The conclusion of the Chairman is as follows: —

From the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947 (Gobindapur) up to the point marked "B" on the said map (Birasri) the red line indicated on the said map is the boundary between India and Pakistan.

From the point "B" the boundary between India and Pakistan shall turn to the east and follow the river which according to the said map runs to that point from the point "C" marked on the said map on the boundary line between the districts of Sylhet and Cachar.

Having regard to the fact that the two Members have disagreed in their views and that the Chairman has agreed with Mr. Justice Chandrasekhara Aiyar, and giving effect, therefore, to the terms of section (2) of the Delhi Agreement under which the view of the Chairman has to prevail, the Tribunal gives the following.

Decision

From the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the Award given by Sir Cyril Radcliffe in his Report of August 13th, 1947 (Gobindapur) up to the point marked "B" on the said (Birasri) the red line indicated on the said map is the boundary between India and Pakistan.

From the point "B" the boundary between India and Pakistan shall turn to the east and follow the river which according to the said map runs to that point from the point "C" marked on the said map on the boundary line between the districts of Sylhet and Cachar.

Done at DACCA in triplicate original, January 26, 1950.

Algot BAGGE.

N. CHANDRASEKHARA AIYAR.

M. SHAHABUDDIN.

APPENDIX I

Opinion of the Hon'ble Mr. Justice H. Chandrasekhara Aiyar on Dispute No. I

1. Sir Cyril Radcliffe was appointed Chairman of what is known as the Bengal Boundary Commission constituted for dividing Bengal and Assam between the Dominions of India and Pakistan. The Commission consisted of two Hindu members and two Moslem members, besides the Chairman. The members were unable to arrive at an agreed view on any of the major questions, and Sir Cyril as Chairman was invited to pronounce his own decision, which by virtue of Section 3 of the Indian Independence Act, 1947, was to become the award of the Commission as a whole. He did so on the 12th of August 1947 and sent up a report to His Excellency the Governor-General of India.

2. It may be mentioned even at the outset that Sir Cyril Radcliffe did not attend the public sittings of the Commission and did not hear the representations made on behalf of the contending parties. He did not make any local inspection. He tells us in paragraph 5 of his report that he however made arrangements "to study daily the record of the proceedings and all material submitted for our consideration". He discussed the issues with his colleagues.

3. To his report are appended annexures A and B. The demarcation of the boundary line between East and West Bengal is described in detail in annexure A. The boundary line is also shown in red in the map annexure B. In paragraph 10 of the report, Sir Cyril says, "The map is annexed for purposes of illustration; and if there should be any divergence between the boundary as described in annexure A and as delineated in the map annexure B, the description in annexure A is to prevail".

4. India and Pakistan were not agreed, after this award, on the interpretation to be placed on some parts or portions of it specifying the boundary line. So, an agreement was reached between them at Delhi in December 1949 that a Tribunal should be set up for the adjudication and final settlement of certain disputes arising out of the interpretation of the award and for demarcating the boundaries accordingly. The present Tribunal has come into existence as a result of this Delhi agreement.

5. The disputes to be decided by this Tribunal are referred to in paragraph 2 (A) and (B) of the Delhi agreement in the following terms: —

"(A) East-West Bengal disputes concerning—

- (i) the boundary between the district of Murshidabad (West Bengal) and the district of Rajshahi including the thanas of Nawabganj and Shibganj of pre-partition Malda district (East Bengal); and
- (ii) that portion of the common boundary between the two Dominions which lies between the point on the river Ganges where the channel of the River Mathabhanga takes off according to Sir Cyril Radcliffe's Award and the

northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

“(B) East Bengal-Assam disputes concerning—

- (i) the Patharia Hill Reserve Forest; and
- (ii) the course of the Kusiya river.”

6. The tribunal held part of its sittings at Calcutta and another part at Dacca. At the Calcutta sittings, the disputes between East and West Bengal were heard and at the Dacca sittings those between East Bengal and Assam were heard.

7. It is not improper on my part to do so, I must express deep gratitude to the Chairman, Herr Algot Bagge, Lord Justice of Sweden. He was a model of patience and kindness and conducted the proceedings of the Tribunal with dignity and in a spirit of sweet reasonableness. I must also express my thankfulness to my colleague, Mr. Justice Shahabuddin, for his unfailing courtesy and kindness. The leading Council for India and Pakistan, Sir S. M. Bose (Advocate General of West Bengal) and Messrs. W. W. K. Page, K. C., and Faiz Ali (Advocate General of East Bengal) deserve praise for the lucidity and brevity of their arguments and the help they rendered to the Tribunal in finishing its labours within a comparatively short period. The Secretary-General, Mr. Sydow, and the Joint Secretaries, as well as, the staff, were very helpful.

8. Before proceeding to discuss the points arising for decision, I may say a word about the map appended as annexure B to Sir Cyril's Award. It is marked Document No. 72 in these proceedings and will be generally referred to as the award map. The endorsement on the map shows that map was compiled in the Bengal Drawing Office in 1944. It is agreed between both parties that it was prepared on the basis of a Survey in the year 1915-16. Neither side is able to tell us how Sir Cyril got this map and from whom. There is not much point however in harping on these deficiencies. As arbitrator, Sir Cyril used this map and drew the boundary line in it between East and West Bengal in red ink. We are bound by it, except in so far as there is any discrepancy or divergence between the boundary line as drawn in the map and the line as specified in annexure A in which event the latter has to prevail.

9. Paragraphs 4 and 5 of annexure A run in these terms: —

“Paragraph (4). From that point, the line shall run along the boundary between the following Thanas:

“Balurghat and Panchbibi; Balurghat and Joypurhat; Balurghat and Dhamaishat; Tapan and Dhamaishat; Tapan and Patnitala; Tapan and Porsha; Bamangola and Porsha; Habibpur and Porsha; Habibpur and Gomastapur; Habibpur and Bholahat; Malda and Bholahat; English Bazar and Bholahat; English Bazar and Shibganj; Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

“Paragraph (5). The line shall then turn south-east down the river Ganges along the boundary between the districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. The district boundaries, and not the actual course of the river Ganges, shall constitute the boundary between East and West Bengal.”

(The underlining is mine).

10. These two paragraphs have given rise to the first dispute between the parties and the question is whether the boundary indicated or specified in paragraph 5 is a rigid and fixed line as contended for India, or whether it is a fluid line shifting with the course of the river Ganges from time to time, which was the contention advanced on behalf of Pakistan. The trouble arises out of the fact that the boundary line specified in paragraph 5 as dividing the districts of Rajshahi and Murshidabad, and the districts of Rajshahi and

Nadia is along the course of the river Ganges, except in one part to which I shall refer later.

11. In view of the very clear language used by Sir Cyril Radcliffe, it appears to me that the position taken up by Pakistan to the effect that the boundary is a shifting or a fluid one, liable to change or alteration according as the river Ganges fluctuates or varies in its course, is untenable. The length in dispute would be about 60 to 70 miles according to the scale specified in the map (1" being equal to 8 miles). I shall briefly give my reasons for this conclusion.

12. We must presume or assume that Sir Cyril Radcliffe was in full possession of all the materials to enable him to pronounce the report. In fact, he says so. Therefore, we must take it that he had before him the several notifications and also maps relied on by either side giving the thana as district boundaries of various localities. He was also aware of the fact that in this particular portion the boundary line ran along the river Ganges. Express reference is made to this fact in the opening sentence of paragraph 5 "The line shall then turn south-east down the river Ganges". With all this knowledge, if Sir Cyril Radcliffe still said at the end of the paragraph that "The district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal", he could have meant only one thing. He definitely intended to rule out a fluid boundary and to have a fixed or rigid boundary between the two States. Surely, Sir Cyril could have said, if Pakistan's contention is right, that the line shall then turn south-east down the river Ganges and go along its course "to the point in the north-western corner of the district Nadia". To accept the argument of Pakistan would be not only to neutralise the final sentence in the paragraph but to ignore it altogether. I am not prepared to hold that the last sentence in paragraph 5 is merely tautological, as Mr. Page had to contend it was.

13. Mr. Page referred in the course of his argument to the principle of international law that where a navigable river is a boundary between two sovereign States, the line of the midstream is regarded as the dividing line. The question before us however is whether it governs us in the present case or whether its application has been excluded by Sir Cyril Radcliffe. It is hardly necessary to point out that the doctrine applies only where there is no specific or express agreement between the parties, and there is nothing else to the contrary. It is open to the two States to vary it and have a different boundary if they so choose. In his book on International law (Third edition—1948), Mr. Fenwick says at page 373—

"In some European treaties, an effort has been made to give a great degree of stability to river boundary-lines by locating the *thalweg* definitely by means of fixed points which were to constitute permanent landmarks for the future. In the Treaty of Versailles of 1919, provision was made that the principal channel of navigable rivers should be the dividing line; but it was further provided that it should be left to the several boundary commissioners appointed by the Treaty to determine whether the boundary-line should follow subsequent changes of the channel or should be definitely fixed by the position of the channel at the time".

14. Instances have been referred to in the leading text-books where specific agreements between the States have deviated from the *thalweg* rule.

15. Several notifications were referred to on the side of Pakistan to reinforce the argument that the midstream or the flowing stream of the Ganges or the Padma or some other river was referred to as the boundary between districts or subdivisions. From this alone, it does not follow that the district boundaries, where they happen to coincide in whole or in part with the course of a river, must be ignored in favour of the middle stream or main stream theory. There might be valid reasons for holding on to the district boundaries despite a natural boundary like a river. Sir Cyril Radcliffe, undoubtedly knew the principle of international law. He presumably knew of the notifications constituting rivers as boundaries in some cases. But still he took care to say in his award that the district boundaries and not the course of the river shall constitute the dividing line.

16. Up to the northern point where the boundary between Kaliachak and Shibganj Thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges, the river runs entirely in the Indian Dominion. From below the point on the river Ganges, where the channel of the river Mathabhanga takes off—which is referred to in paragraph 6 of the award—the river Ganges is entirely in the Pakistan territory of East Bengal. The dispute is only as regards the boundary line between the said two points, which is a comparatively small stretch of 60 to 70 miles as stated already.

17. It would be seen from the District map of Rajshahi (Document 77) and the notification of the boundaries of the District as found at page 187 of India's document (Doct. 67) and page 24 of Pakistan's documents (Doct. No. 105) (the relevant passage is at pages 189 and 26 respectively) that the boundary line specified by Sir Cyril Radcliffe in paragraph 5 consists in part of a land boundary, *i.e.* running over or through a *char* area thrown up by the Ganges in the course of its erratic flow. It is conceded by Pakistan in paragraph 5 of its case that this is a land boundary. The words used are "excepting in the *char* area in the river Ganges opposite the Rajshahi town where the boundary line runs over land". This land boundary is clearly delineated in the district map of Rajshahi filed by India. It is incorporated so to say and forms part and parcel of boundary line specified by Sir Cyril Radcliffe.

18. If we favour the construction placed by Pakistan and hold that Sir Cyril had in his mind a fluid line along the middle stream of the river Ganges as the boundary to demarcate the two sovereign States, we shall be face to face with the position that if and when the river Ganges changes its course, as it well might at any time, having regard to its extreme waywardness or eccentricity, the boundary will of course have to change with the river according to the principle of international law, and we may probably get disconnected from the land boundary in the *char* area at one or both ends. What is to happen then, unless we resort to some unauthorised process of joining the two *char* ends to the nearest points of the middle stream of the Ganges in its new or altered course, as indicated by Mr. Page in the two oil-painting sketches prepared and filed by him (Docts. 165 and 166)? In such an event, we may have to abandon the land boundary altogether. But can we do so? Obviously not.

19. It would be seen from the papers produced on behalf of and relied on by Pakistan before the Boundary Commission (Docts. 119 and 120) that there was an acute controversy over the Rampur-Boalia area to the south of the Rajshahi town. This is the *char* area, if we may roughly call it so. Is there anything unreasonable in thinking that Sir Cyril wanted to put an end to this fight about this area in particular once and for all by specifying the district boundaries and eliminating in express words the river course as a boundary so that the future of that area need not depend upon the whims and fancies or the ficklemindedness of the river?

20. Regard must also be had to the use of the word "actual" in the sentence "and not the actual course of the river Ganges". If he had merely said, "the course of the river Ganges", two results would have followed; one is that a doubt might well have arisen whether he was not thinking of the possible, potential or future course of the river in the progress of time; another is that the *char* area, a portion of which he was now giving to India on the basis of the district boundary line, might cease to belong to India if the river changes its course; and he probably wanted to avoid this.

21. It is perfectly obvious that as regards the *char* stretch of territory in an around Rampur-Boalia, there is no room for any controversy. The river Ganges does not there flow between two States. It lies entirely within Indian territory; Pakistan has no claim to the river here; and, therefore, there is no scope for the application of any international law or for any theory about the main stream of a flowing river being the boundary. Faced with this difficulty, Mr. Page, the leading Counsel for Pakistan, whose services ceased to be available for that Dominion for reasons which are unnecessary to go into at present but which are found in a rather extraordinary petition filed on the side of Pakistan by its learned Advocate General Mr. Faiz Ali, had to resort to a rather inscrutable theory of

connecting *char* ends with the midstream points of the changed course of the Ganges along the shortest line or lines.

22. We have little to do with the reasons which might have led Sir Cyril to adopt this particular line of division. It is possible that the fight over the Rampur area might have influenced him. It is equally possible that having regard to the fact that he was here having only a small stretch of boundary, he did not want complicated questions of international law to arise based on assertions and counter-assertions, on the part of the two sovereign States (who were by no means friendly) about the future changes in the course of such a forceful and wayward river, which could be settled only by treaty or war, and not by resort to any courts of law. When the two parts of a territory or area belong to one sovereign State, the boundary line could be changed by appropriate orders in the shape of notifications or otherwise whenever it is found necessary owing to the boundary river altering its course. But no such change could be effected when the areas belong to different countries, unless they choose to agree on a particular line of action. It is not at all surprising, therefore, that Sir Cyril took care to say that the district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal.

23. The overriding purpose or object of the division must be borne in mind in construing the award. The idea was to bring into existence two independent Sovereign States which would have nothing more to do with each other except as the result of treaty or agreement or adjustment. The interpretation of the boundary on the basis of a fluid line would definitely frustrate this idea if the river changes its course. Pakistan territory might become Indian territory and *vice versa*; and pockets might be created in each State of what must be regarded as foreign territory. How is the government to be carried on of such areas? What is to happen to the administration, and what would be the method of approach to the pockets situated in the centre of one State surrounded on all sides by an area belonging to an alien State? Surely, a person of the eminence and experience of Sir Cyril Radcliffe must have envisaged all these difficulties and made up his mind to provide for definite and inflexible boundaries. It is true that inconveniences may crop up as regards navigation and exchange of commerce, but such inconveniences will have to be faced by both the States; and if they are so minded as not to come to any agreement or treaty but desire to continue their hostilities or antagonistic propensities to the bitter end, they must suffer. The rigid boundary would probably bring the two States nearer each other than it would be otherwise; necessity will compel them to find a solution and come to an agreement about the user of the waters for purposes of navigation on the side of the other State. To me it appears that having regard to the primary object in view, the governing purpose, if we may use such an expression, the fluid line theory based on the principle of international law must be ruled out altogether in the present case and also as regards the Mathabhanga river to be dealt with presently under Dispute No. II.

24. Further, though it is theoretically possible to conceive of a boundary which is fixed in portions and flexible in other portions, yet when the stretch of boundary is found to be interspersed with land areas here and there, it would be extremely inconvenient, if not impossible, to work the boundary on the basis suggested by Pakistan. As indicated already, there is every possibility of the land area getting detached from the middle stream line if the river chooses to become erratic at any particular part or over a particular stretch, and the areas, though they belong to Pakistan or India according to the division, may suddenly come to belong to the other sovereign State, under a totally different set-up-political, economic and social. As I have pointed out already in the earlier portions of this opinion, matters would be quite different if the question arose as between two provinces under the same Government, or between two States not totally independent of each other, but owing adherence or allegiance to a central authority, and subject to the jurisdiction of a federal or supreme court, which could decide questions arising between the two States as if they were between two individuals.

25. If the middle stream of the river Ganges is the boundary, then *ex-hypothesi*, there can be no disruption of the line at any time. As the river changes, the middle stream

line will change and with it the boundary. There can be no break in the boundary—not abrupt or disappointed or disconnected ends.

26. So, on any given date, the boundary can be demarcated by joining the two ends of the middle stream—be the line straight or curved or wavy. This can be easily illustrated by simple pencil sketches.

27. Let us suppose that AB are flexible points whose connecting line divides two districts. If the districts have to be divided off from each other, all that has to be done is to draw a line between AB on the date of division. The flexibility of the two points has nothing to do with the possibility of actual division on a particular date by joinder of these two points.

28. What did Sir Cyril say? Here, again, let us take that AB is the district boundary line—A and B being flexible on that date. He said that the said line—as it could be not only envisaged but also demarcated on the date of the award—shall divide the two States. There is nothing to prevent two flexible points being converted into rigid points at a division. He went further and said “the actual course of the river” will not be the boundary. When he used these words he must have had in his mind the shifting nature of the river and probably did not want that the district boundary line as it may come into existence at any future date owing to the river altering its course should be taken to be the dividing line. Obviously he was thinking of putting an end to future trouble by making the district boundary line as it could be fixed or settled or determined on that date as the boundary. If he did not add the said words, doubts might well have arisen to the effect that as the district boundary line runs along the midstream of the river, flexibility will continue as regards the boundary. He wanted to avoid this and so took care to use express language to silence any doubts and put an end to arguments based on inference or implication.

29. Let me paraphrase Sir Cyril’s sentence. “The district boundaries” *i.e.*, the midstream of the river (as it exists today) and “not the actual course of the river”, *i.e.*, the midstream which will fluctuate from time to time (if the course of the river is taken as the boundary), shall divide the two States. In other words, he wanted to have a permanent boundary, not a shifting one.

30. Sir Cyril must have definitely intended that the two States should be left in no uncertainty about their boundary line and that what was flexible till then—and no harm or trouble could arise out of such fluidity of boundary when we had only one State and one rule—should become rigid or permanent as he had to deal with two States whose territorial limits had to be ascertained and settled without possibility of future wrangle.

31. The very Delhi agreement under which the Tribunal is constituted contemplates elaborate demarcation operations in connection with the boundary line to be conducted by experts of both the States. What is there to demarcate, if the boundary is a fluid one liable to change or alteration at any moment? Is all the trouble to be taken only to ascertain what the boundary is on a particular date, knowing full well that it may not be the boundary the next day? Surveys of the river, cadastral or otherwise, will then be a futile endeavour; and topographical maps prepared at elaborate expense and cost by means of aerial photographs have to be thrown aside every time the river changes. It is very difficult to see the purpose behind so much trouble or the usefulness of such undertakings, if Sir Cyril intended a fluid boundary.

32. Finally, arises the question on what basis we are now to determine and demarcate the rigid boundary line. Are we to take the notification line of 1940 based on the survey of 1915-16, or are we to go by what the line was on the date of the award (August 1947), or can we say that the boundary should be fixed as on the present date? The first alternative is out of the question at this distance of time. It is possible that the district boundary on the date of the award can be ascertained and demarcated; and if this assumption is correct, this is the next alternative. If, however, even this is not possible, the only other practical solution will be to demarcate the boundary line, *i.e.*, the midstream line of the Ganges and the land boundary within a particular period to be fixed—let us say, as soon as possible within one year from the date of the publication of the award. The

line has to be demarcated as contemplated in paragraph 3, sub-clause (3) of the Delhi agreement.

N. CHANDRASEKHARA AIYAR.

APPENDIX II

Opinion of the Hon'ble Mr. Justice Shahabuddin on Dispute No. I

This dispute relates to the boundary between the two Dominions from the point on the river Ganges where the boundary between the thanas of Kaliachak and Shibganj meets the boundary between the districts of Malda and Murshidabad to the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. The boundary between these two points as described in the concluding portion of paragraph 4 and in paragraph 5 of Annexure A to Sir Cyril Radcliffe's Bengal award runs down the river Ganges along the boundary between the districts of Malda and Murshidabad, Rajshahi and Murshidabad and Rajshahi and Nadia. The boundary between these districts according to the relevant notifications was the midstream of the Ganges except across Rampur-Boalia *char* where the boundary runs on land. This description is followed by the sentence on the interpretation of which the decision in this case rests, and that sentence is "The District Boundaries, and not the actual course of the river Ganges, shall constitute the boundary between East and West Bengal".

The case for India is to the following effect. The words "and not the actual course of the river Ganges" mean that the river should not be the boundary. Had these words not occurred in the award different considerations might have arisen, but these words clearly indicate that Sir Cyril ignored the river altogether because he knew it might shift its course. He therefore laid down a fixed line which he delineated on the map, and that is the line of demarcation to be worked out on the site.

Pakistan's case, on the other hand, is that the correct interpretation of the second sentence in paragraph 5 of Annexure A is that the district boundaries *i.e.*, the midstream of the river Ganges for the time being except across the Rampur-Boalia *char*, as distinguished from the factual existing course of the river at the date of the award, shall be the boundary. This boundary was not intended to be a fixed unalterable boundary. It is a river boundary subject to variations resulting from changes in its course. The words "and not the actual course" were used because Sir Cyril had decided to retain the fixed land boundary across the Rampur-Boalia *char* and also because he was not aware of the then existing course of the river Ganges, the map before him being one based on the survey of the river made as far back as 1915-16. The map is only an illustration and being divergent from the description in the award, the latter should prevail.

In order to decide which of the interpretations is correct it is necessary to determine what the expression "District Boundaries" in the sentence in question was intended to mean. Boundaries of districts are declared by notifications issued under Act IV of 1864. The relevant notifications prior to 1917 were of 1875 in which the boundary between the districts with which we are concerned was defined as the flowing stream of the Ganges, or river Ganges. After 1915-16 survey, when maps had to be prepared, the question arose whether the notifications should be interpreted according to the existing position of the river or according to the position it occupied when those notifications were made and if the former whether fresh notifications were necessary. The Government decided that maps should be prepared on the supposition that "the centre of the stream which for the time being is the main stream" of the Ganges is the boundary and that no fresh district notifications were necessary. (Documents 107, 125, and 108). Subsequently a district notification, regarding the boundaries of Rajshahi district was issued in 1940 and a similar notification about the boundaries of Malda district was issued in 1942, but these were not issued on account of any change in the course of the river. (Documents Nos. 105 and 106). They were issued in respect of changes in the land boundary only. In both these notifica-

tions it is stated that the village boundaries mentioned therein were the boundaries as demarcated at the survey operations that had taken place long before the notifications; but no such statement is made therein regarding the river boundary, which is referred to as "the midstream of the river Ganges" in the case of Rajshahi district and "the midstream of the main channel of the Ganges or Padma river" in the case of Malda district, and not as the midstream of the year of the Survey. These notifications were therefore based on the Cadastral Survey only in respect of the land boundaries and not in respect of the river boundary. From the above documents it is clear that the midstream when declared to be the boundary between districts means the midstream for the time being *i.e.*, the midstream wherever it may be whenever the question arises, and that no fresh notification is necessary when the midstream changes, as the midstream even after the change would still continue to be the district boundary, and that it is only when there is a change in the land boundaries of the district that a fresh notification is necessary.

In respect of other rivers which divided the districts of Mymensingh and Pabna in one case and Jessore and Khulna in another case the same principle was stated by the East Bengal and Assam Government in Document No. 109 and by the Government of India in Document No. 114.

Sir Cyril, when he decided to adopt the district boundaries, must have known that the district boundary in question was the midstream wherever it may be whenever the question arises, except across the Rampur-Boalia *char*. When he made the district boundary, the boundary, he could not have meant by the words "and not the actual course of the river" that the river should not be the boundary, for, if in the sentence in question, for the words "district boundary" the meaning of that expression stated above is substituted and the words "and not the actual course of the river" are taken to exclude the river altogether as boundary, the sentence does not make sense. The words "and not the actual course of the river" were evidently used to emphasise that the land boundary across Rampur-Boalia *char* should be maintained as against the river line in this area. These words therefore mean that wherever the district boundary is not the actual course of the river, the district boundary should be followed and not the actual course of the river. The district boundary itself no doubt recognised the land boundary across the *char*, but emphasis had to be laid on it owing to the keen controversy about the *char* before the Radcliffe Commission.

There is no reason to think that Sir Cyril was averse to making the river a boundary. It is clear from the language of paragraph 6 of the Annexure A that Sir Cyril intended the river Mathabhanga to be a boundary. In paragraph 8 of the same Annexure he made the district boundary the boundary between Khulna and 24 Pargans, although for about 50 to 60 miles the river formed part of that boundary. In the Sylhet award he made the river Kusiara a boundary between East Bengal and Assam. Paragraph 11 of his Bengal award indicates that he fully realised the importance of rivers to the life of provinces. Extracts from arguments advanced before the Radcliffe Commission show that the parties concerned preferred a river boundary and in fact pressed for it. Navigable rivers are of considerable importance and they constitute boundaries between independent states and are also recognised as good boundaries under the International Law. To people of both the Dominions living in the districts on both sides of the river Ganges, the river is of great importance. Sir Cyril must have kept this in view while determining the boundary line. In clause 2 of paragraph 8 of his award he set for himself the question whether the attractions of Padma-Madhamati river line displaced the strong claims of the heavy concentrations of Muslim majorities in the districts of Jessore and Nadia. He did not decide on a river boundary in that area as the other consideration was far weightier. But in the area with which we are concerned in this case there were no such considerations that could outweigh the advantages of a river boundary.

On the other hand, Sir Cyril must have considered it necessary and advantageous to both parties to have a flexible boundary in this area. He gave Murshidabad to West Bengal, although it was a predominantly Muslim area, because he took the view that it was essential for the life of Calcutta that West Bengal alone should have control over the territory in which Bhagirathi and its tributaries take off from the Ganges. Having done that, he could not have intended the boundary between East and West Bengal in this area

to be rigid for, if the Ganges were to flow into Pakistan in the region where the Bhagirathi and its tributaries take off, West Bengal would cease to have control over the head waters of these rivers.

That Bhagirathi and other rivers have been taking off from the Ganges even when it changed its course is seen from the last map in Document No. 136. Even if it so happens that when the Ganges changes its course the Bhagirathi and other rivers do not take off from the Ganges, still, West Bengal, if the boundary is flexible, can through canals secure sufficient supply of water to save the Bhagirathi and its tributaries from drying up.

It is true that when the river changes its course people living in the neighbourhood are inconvenienced, but this disadvantage pales into insignificance when the disadvantages of a fixed boundary are taken into consideration. The Ganges is an erratic river and when it shifts its course it does not do so uniformly in one direction but flows zig-zag with the result that if the boundary line is a fixed one the river will be flowing in some of its portions on the Pakistan side of the line and in some on the Indian side. This would raise serious difficulties for the passengers and goods of both the states not at one but at several places. Sir Cyril could not have failed to take notice of this important fact. If however he had the idea of fixing a rigid boundary he would in my opinion have definitely said that the line he was drawing would be a rigid line. If he had been averse to a river boundary he would not have made about ten miles of the river Mathabhanga the boundary in the second dispute or about 60 miles of the river a part of the boundary between Khulna and 24 Parganas or the river Kusiya the boundary in paragraph 13 of the Sylhet Award.

I am therefore of the opinion that the words "and not actual course of the river Ganges" were used, as already stated, only to emphasise that the land boundary across the *char* should not be disturbed and not to indicate a rigid boundary.

As for delineation on the map, Sir Cyril has made it clear in paragraph 10 of his award that the map was intended as an illustration and that, if there be any divergence between the description in Annexure A and the map, the former shall prevail. The map which was used by Sir Cyril was based on the Survey of 1915-16. Sir Cyril must have known that it did not represent the actual state of the river on the date of the award. The language in which he had described the boundary line in paragraphs 4, 5, and 6 of Annexure A (for example, "the point where the boundary between the last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the River Ganges"; "the line shall then turn south-east down the River Ganges"; "to the point . . . where the channel of River Mathabhanga takes off from the River Ganges"; and "where the channel of River Mathabhanga takes off to the northern most point where it meets the boundary between the thanas of Daulatpur and Karimpur") (underlining is mine) clearly indicates that Sir Cyril was referring to the position of the river on the date of the award and thereafter and not to the midstream of any of the past years, much less to the midstream of the survey of 1915-16. The telegram of the Prime Minister of India to the Prime Minister of Pakistan (Document No. 121) with regard to this very boundary states that ". . . since maps were last made there have been considerable changes in the position of rivers. It is essential therefore to prepare a proper topographical map of country three or four miles wide across the boundary. After the map has been prepared demarcation of boundary on the ground and marking of the boundary on map will be easy". In the joint proposals of Surveyor General of India and Director General of Surveys, Pakistan (Document No. 123) it is stated that ". . . the existing maps (including those which have evidently been used in defining the boundary for the Radcliffe Award) are inaccurate and out of date . . . It is therefore considered that any attempt to reach agreement as to the proper course of the boundary with the aid of these maps alone is almost certain to result in failure, since there are bound to be discrepancies between individual maps and between the maps and the ground . . .". In the circumstances delineation in Annexure B has to be considered as divergent from the description in Annexure A and cannot be relied on for the purposes of demarcation.

It was contented by the Learned Counsel for India that if the boundary be made flexible there might be difficulties in connecting the extremities of the land boundary on

Rampur-Boalia *char* with the midstream on either side. But as explained by the Learned Counsel for Pakistan, either end of the land boundary can always be connected with the midstream wherever it may be and in case the river takes a sudden turn and leaves its bed the principles of avulsion would apply. The Ganges however has not been known to take such sudden and violent turns. In any case the land boundary has to be connected with the midstream even if the entire boundary in this area is considered to be rigid, because the fixation of a rigid boundary should be made only with reference to the position of the river on the date of the award, and if for any reason that is not possible or convenient, with reference to the position of the river at the present day. The position of the river at the time of 1915-16 survey some thirty years back cannot be taken as the basis for demarcation, nor is the adoption of such a course practicable or just and reasonable. In the case of a flexible boundary the connecting lines in this part of the river would no doubt have to be readjusted whenever the midstream changes, but when once the initial connection is made and the pillars are planted, which has to be done in any case, readjustment in case the river changes would not be difficult.

I am therefore clearly of the opinion that the construction put by Pakistan on the award in connection with this dispute is correct and reasonable, that the boundary in this area, except over the Rampur-Boalia *char* is flexible and not rigid and that the boundary line shall run along the course described in the Pakistan statement of the case, subject only to such geographical variations as may result from changes occurring in the course of the river Ganges.

M. SHAHABUDDIN.

APPENDIX III

The opinion of the Chairman on Dispute No. I

The case submitted in this dispute on behalf of the Government of India is that the line marked by Sir Cyril Radcliffe in Annexure B of his award is the actual line of demarcation to be worked out on the site and that in consequence this line shall be rigid, not shifting according to the course of the river Ganges.

The case submitted by the Government of Pakistan is that upon a proper construction of the award, the district boundary is and is to remain the boundary between India and Pakistan subject only to such geographical variations as may result from changes occurring in the course of the river.

The relevant portion of the Award in Annexure A is in this respect as follows: —

“4. From that point a line shall run along the boundary between the following Thanas: —

“. . . Kaliachak and Shibganj; to the point where the boundary between the two last mentioned thanas meets the boundary between the districts of Malda and Murshidabad on the river Ganges.

“5. The line shall then turn south-east down the River Ganges along the boundary between the districts of Malda and Murshidabad; Rajshahi and Murshidabad; Rajshahi and Nadia; to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.”

The boundary between Rajshahi and Murshidabad districts was last notified, before the Partition, under Bengal Act IV of 1864, by notification No. 10413-Jur., dated 11th November, 1940. This notification while describing the boundary between Rajshahi district and adjoining districts (Nadia and Murshidabad) going in the direction up the river Ganges States as follows: —

“thence along the south-western boundary of Naosara Sultanpur (209), southern boundary of Fatepur Palasi J.L. No. 190, up to the midstream of the Ganges, police-

station Charghat, thence along the midstream of the Ganges up to a point near the south-east corner of village Char Rajanagar (J.L. No. 99), police-station Raninagar in the district of Murshidabad; thence northward along the eastern boundary of Char Rajanagar up to the south-east corner of Diar Khidirpur (No. 243 of police-station Boalia), thence along the southern and western boundaries of Diar Khidirpur, thence along the southern boundary and part of western boundary of Char Khidirpur (235), thence along the southern boundary of Taranagar (232), thence along the eastern boundary of Majher Diar (231), up to the midstream of the Ganges, thence along the midstream of the Ganges up to the junction of the midstream of the Ganges and the Mahnanda, river, . . .”

The district boundary between Malda and Murshidabad was notified last, before the Partition, by notification No. 2667-Jur., dated 6th March, 1942, under Bengal Act IV of 1864. This notification, while describing the southern boundary of the district of Malda (*i.e.* the boundary between Malda and Murshidabad districts), states as follows:—

“up to the junction with the trijunction point of districts of Rajshahi, Malda and Murshidabad on the main channel of the Ganges or Padma river.

“South-western and western boundary of the district.

“Thence towards north-west and north along the midstream of the main channel of the Ganges or Padma river up to the junction with the trijunction point on the main channel of the districts of Malda, Santhal Parganas and Purnea . . .”.

The northern and north-eastern boundary of the Murshidabad district (*i.e.* the district boundary between Murshidabad on one side and Rajshahi and Malda on the other) was notified under the notification dated February 11th, 1875, as following the stream of the rivers “Ganges” and “Pudda”. After that there is no district notification of Murshidabad covering the disputed area, but if the Thana notifications up to 1931 are congregated then the line so formed will tally with the boundary line of Rajshahi and Malda.

According to these notifications the district boundary between Malda and Murshidabad was then “the midstream of the main channel” of the river Ganges and between Murshidabad and Rajshahi “the midstream of the river Ganges” with the exception of the *char* area in the river Ganges, opposite Rajshahi town, where the boundary line ran over land. The district boundary in consequence according to those notifications ran to about seven eighths in the Ganges and to about one eighth on land, *viz.*, the *char* area opposite Rajshahi town.

The first question to examine is whether the district notification line in the river Ganges consisting in “the midstream of the main channel of the river Ganges” or “the midstream of the river Ganges” was rigid and object of correction only through a new notification or if this line in the river Ganges was fluid line.

On behalf of the Indian Government it has been argued that the district boundary always was a rigid line, *i.e.*, when a notification declared the main stream of a river as the boundary, the main stream at the time of the notification was intended. The Pakistan Government on the other side contends that the district boundary in a river was not a fixed boundary in the sense of a demarcated line, but a notional boundary which depended on the existing course of the river. That will say that according to the Government of Pakistan if the main stream of the river left its old bed and formed a new one the district boundary line followed the new main stream of the river until and official notification made a change in the boundary.

The notifications contain no explicit disposition whether the notifications when talking of the midstream of the river Ganges mean the midstream of the Ganges at the time of the notification—rigid line—or the midstream of the river Ganges as it is any time until the next notification—a flexible line.

However, the correspondence in the Documents Nos. 110-118 indicates that the boundary between the districts by the Governmental authorities was held to be the centre

of the stream which at the time in question is actually the main stream, meaning thereby presumably at any time when the question of the boundary came up.

It seems therefore not possible to hold that the district boundary in the river Ganges in the disputed area was a rigid line.

Another question is however whether the boundary between India and Pakistan as established in the award is embodying the flexible line of the district boundaries or whether the boundary between India and Pakistan is according to the award a stationary line.

It is stated in the award that "the line shall then turn south-east down the river Ganges along the boundary between the Districts of Malda and Murshidabad etc., . . . to the point in the north-western corner etc. . . .". Supposing that the award had not gone beyond stating this, the boundary between India and Pakistan having incorporated the district boundary would have been a fluid line in the river Ganges down to the *char* area opposite Rajshahi town, a rigid line over the *char* and then a fluid line in the river Ganges down to the point where the river Mathabhanga takes off. But the award continues that "the district boundaries, and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal".

The flexible district boundaries which cover about seven-eighths of the boundary stretch now in question, were at the time of the award following the then actual course of the river Ganges.

To take the flexible district boundaries as the boundary between India and Pakistan would then be to have the flowing course of the river Ganges as the boundary on a great part of the boundary line. This would be contrary to the prescription in the award that the actual course of the river Ganges shall not constitute the boundary between East and West Bengal.

It has been maintained that another interpretation of the words "not the actual course etc." is possible, *viz.*, that the words have been used only to indicate that the boundary should run across the *char* area. But that should have been the result even without this sentence as it already has been stated in the description that the line should run along the boundary between the two districts, *i.e.*, across the *char* area. It is not possible that Sir Cyril Radcliffe who otherwise in the award has used very concise language just here should have expressed himself in terms which are purely tautological. These words must have a special meaning and according to my opinion the meaning is the one above explained.

The award then cannot mean the boundary to be a flexible line. Such an interpretation having been accepted, the question arises which rigid district boundary lines are meant in the description.

It would, in itself, seem to be a natural thing to interpret the expression "the district boundaries" in Annexure A with the help of the map in Annexure B. On this map there are drawn district boundaries on the stretch in dispute and Sir Cyril Radcliffe has followed these district boundaries in delineating the boundary between India and Pakistan on the stretch in question.

To consider the district boundaries drawn on the map as the district boundaries of the description offers no difficulty as regards the land boundaries. They are put down on the map as notified in the latest notifications and they show the district land boundaries at the time of the award.

But concerning the part of the district boundaries which are following the midstream of the river Ganges difficulties arise in making use of the map as regards the interpretation of the district boundaries of the description in Annexure A.

The map in Annexure B is a congregated map of the district maps used at the time of the latest notifications. As the district maps are based on a survey which was started in 1915 and completed in 1926, the map does not reproduce the position of the river at the

time of the notifications but at the time of the survey. The map, in fact, does on the stretch which is following the river Ganges not reproduce any other district boundaries than those determined by the position of the river Ganges at the time about thirty years ago when the survey maps were made on which the map in Annexure B is based. To interpret the words "district boundaries" in the description in Annexure A on this stretch as being the same as the district boundaries as determined by the position of the river Ganges as demarcated on the map in Annexure B does not seem possible. The district boundaries and the delineation of the boundary between India and Pakistan following these district boundaries in the river Ganges as demarcated on the map can therefore not be considered as having been meant as an illustration of the words "district boundaries" in the description so far as the district boundaries following the midstream of the river Ganges are concerned.

It remains then as regards the part of the district boundaries which is following the midstream of the river Ganges to decide whether to take the district boundaries as they were at the time of the latest notifications of the districts concerned or the district boundaries as they were at the time of the award.

The position of the district boundaries as they were at the time of the notifications depends so far as they are following the midstream of the river Ganges on the position of the river at the time of the different notifications. As the river Ganges certainly has shifted its course between the dates of these different notifications no continuous and common district boundary line can be taken as existing at the different dates of the notifications so far as the district boundaries of the notifications were determined by the midstream of the river Ganges.

The dates of the latest notifications therefore cannot be taken as the time for deciding the position of the district boundaries.

As regards then the time of the date of the award there is to be remembered the stipulation in Annexure "A" that the district boundaries and not the actual course of the river Ganges shall constitute the boundary between East and West Bengal. The interpretation given of this stipulation is that the boundary as determined by the district boundaries is to be a rigid and not a flexible line.

By taking the district boundary line at the time of the award as a rigid line you do not then come into conflict with the stipulation that the actual flowing course of the river Ganges shall not constitute the boundary.

My conclusion is therefore that in the area in dispute the district boundary line consisting of the land boundary portion of the district boundary as shown on the map, Annexure "B", and as described in the Notification No. 10413-Jur., of 11-11-40, and the boundary following the course of the midstream of the main channel of the river Ganges as it was at the time of the award given by Sir Cyril Radcliffe in his Report of August 12th, 1947, is the boundary between India and Pakistan to be demarcated on the site.

If the demarcation of this line is found to be impossible, the boundary between India and Pakistan in this area shall then be a line consisting of the land portion of the above mentioned boundary and of the boundary following the course of the midstream of the main channel of the river Ganges as determined on the date of demarcation and not as it was on the date of the award. The demarcation of this line shall be made as soon as possible and at the latest within one year from the date of the publication of this decision.

Algot BAGGE.

APPENDIX IV

Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar on Dispute No. II

This dispute arises as regards the interpretation to be placed upon paragraph 6 of Annexure "A" to Sir Cyril Radcliffe's award. The paragraph is a short one and is in these terms—

“From the point of the river Ganges where the channel of the river Mathabhanga takes off, the line shall run along that channel to the northern-most point where it meets the boundary between the thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary”.

The issue to be decided lies within a narrow compass but is a bit complicated. In his map Annexure “B”, Sir Cyril has drawn a red line between the two points mentioned by him and has shown the red line as the Mathabhanga. It is contended for Pakistan that the course of the Mathabhanga has not been correctly shown by Sir Cyril and that as a matter of fact it takes off from the Ganges at a much higher point to the north-west and flows down south-wards in the direction of what is specified in the plan as “Mathabhanga R.” with a dead end, so to say. Therefore it is argued for that Dominion that the red boundary line given by Sir Cyril from the northern point up to the point where it meets the boundary between the thanas of Daulatpur and Karimpur is a wrong demarcation of the boundary and that it should be really further west.

2. This claim is set out in paragraph 2 of Pakistan’s case as the second subject-matter of dispute and is in these terms—

“At and before the date of the said Award, the Mathabhanga river took off and now takes off from the Ganges near village Godagaridiar J.L. No. 170 of Daulatpur P.S. and flowed as it now flows through mauzas Udainagar Khanda, J.L. No. 169, and Muradpur Diar J.L. No. 172 of Daulatpur P.S. Muradpur Jalangi P.S. of Murshidabad district and Mauza Madhugari J.L. No. 108 of Karimpur P.S. meeting the boundary between thanas Daulatpur and Karimpur near the south-western corner of Char Sarkarpara J.L. No. 178 of Daulatpur P.S.”.

3. On the other hand, it is urged for India that the course of the Mathabhanga river is not what is claimed by Pakistan but is something different and that wherever the Mathabhanga might be, Sir Cyril has in fact assumed its course to be a particular one and as he has not merely fixed the northern and southern points of its course but has also drawn a line to indicate the dividing boundary between the two States, it is not open to us now, even if there is a mistake, to go beyond his award, and modify or rectify it.

4. The case for Pakistan that the river Mathabhanga takes off from the Ganges near the village of Godagaridiar and flows southwards through certain mauzas and thanas till it reaches the boundary between Daulatpur and Karimpur has not been made out from the documents filed on either side. At the best, the village and thak maps taken individually and pieced together take us a little to the north of Jalangi so far as a river course is concerned; but it is not the Mathabhanga as is claimed; it may be the Jalangi or some tributary for aught we know. It is seen from the Survey Map of 1854 and the annual River Reports produced by Pakistan (Docts. 140 to 150) that the Mathabhanga has been as eccentric and changeful as her mother the river Ganges and it is not possible to determine her course with any exactitude for any length of time.

5. The learned Advocate General of West Bengal was asked by us to state where according to him is the river Mathabhanga and where it takes off from the river Ganges. He was not able to give a definite answer and suggest anything constructive about his own case. He however conceded that according to the documents that were available to him and placed before the Tribunal the river does not take off from the point shown by Sir Cyril in his map and that the course of the river indicated by him may be taken to be wrong. But he urged that this did not conclude the case against India and that we were bound even by the wrong assumption on a question of fact by Sir Cyril, the arbitrator.

6. The position then is this. Pakistan is not correct in describing the course of the Mathabhanga river and in stating that it takes off from the Ganges near Godagaridiar. India is not able definitely to locate or delineate the course of the river, though it has many theories and suggestions as to what it might be, all of which put together do more to destroy the case for Pakistan than to build up an affirmative case for India. It is conceded that Sir Cyril’s Mathabhanga is wrong and that as a matter of fact no river with such a name takes off from the Ganges at the point indicated by him. It seems to me that Sir

Cyril's Mathabhanga is some old course of the river which he got from some of the numerous maps that must have been placed before him.

7. A doubt may arise if Sir Cyril's position was that of an arbitrator and if his pronouncement can be said to be an award as the two rival parties did not select him to decide any competing claims as between themselves. But such a doubt can only be a passing one. It is not necessary that the parties should have conflicting claims based on antecedent rights, alleged or real, nor is it essential that the person to decide between them should be chosen by them. Any two persons may agree that a third man to be chosen by an independent party should effect a division between them of properties and if that third man is not functioning as a judge in a court of law created or erected by the constitution subject to all the limitations of strict procedure, rules of evidence, appeal and revision, he is really an arbitrator, nothing more, nothing less.

8. It should be remembered that we are not sitting as a court of appeal or revision against Sir Cyril Radcliffe's Award. Our powers are very limited. We cannot remit the award for reconsideration or rectification. It is true that clerical errors and mistakes in an award can be set right and mistakes appearing on the face of the award can also be rectified by the arbitrator being asked to reconsider what he has done. But no such jurisdiction has been conferred on us under the terms of the Delhi agreement. All that we have to do is only to interpret his award and ascertain the common boundary as indicated by him. It cannot be said that Sir Cyril Radcliffe had no jurisdiction in assuming that a particular watercourse represented the Mathabhanga river and that it took off from the Ganges at a particular point. He might have been wrong in his assumptions. He has not only done so in the present case but has delineated the boundary line in a particular manner joining the northern point on the river Ganges with the southern point on the boundary between the thanas of Daulatpur and Karimpur. He has indicated this portion as the Mathabhanga and he did so notwithstanding the fact that he had before his eyes the map with the words "Mathabhanga R." at the dead end of the river to the west suggesting that the river had probably a different course. Can we under these circumstances substitute for Sir Cyril's Mathabhanga line the real Mathabhanga course, assuming that we are now able to ascertain it with precision and say that the latter shall constitute the boundary line of these two States? Such a power would be regarded as extraordinary EVEN FOR A COURT OF APPEAL OR REVISION. Even then, the award would have to be remitted to the arbitrator for reconsideration.

9. Two passages only need be quoted from the leading text-book on Arbitration and Award by Russel (twelfth edition) to illustrate the very restricted nature of this jurisdiction. One passage is on page 177:

"Where an arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted".

The other is at page 179:

"The decision to which the arbitrator really comes, as soon as he expresses it in his award, is final both as to law and fact. No decision, therefore, at which he arrived, if properly expressed in the award, can be a mistake or affect the finality of his award on that ground".

In the case of *In re Great Western Rail Co.*, and the *Postmaster General*, 19 Time L. Reports 136, where the figures on which the award had been based had been misapprehended and misunderstood, the award was still held binding. The decision in *Bland v. Russian Bank for Foreign Trade* (1960), 11 Com. Cas. 71, shows the extreme extent to which the courts have attached finality to the awards of the arbitrators. "An agreement provided for the reference of disputes to arbitration on the 'basis of Riga usance'. The arbitrator made an award which was regular on the face of it, but he had not the agreement for reference before him at the time of the arbitration and he had never heard of Riga usance, to which he had no regard in making his award. Held that it must be presumed in

the absence of evidence to the contrary, that the award was in accordance with Riga usage.”

10. Mr. Page urged that this was a case of divergence between the boundary as described in Annexure “A” and as delineated on the map Annexure “B” and that consequently according to paragraph 10 of the Report of Sir Cyril, the description in Annexure “A” should prevail. As a matter of fact, however, there is no such divergence as is contemplated in the said paragraph. The boundary as described in Annexure “A” and as delineated on the map in Annexure “B” correspond with each other. What is defective or wrong is the assumption by Sir Cyril that the Mathabhanga river took off from the Ganges at the particular point mentioned by him. Both Annexures A and B proceed on this mistaken assumption, but there is no disagreement between them *inter se*. The mistake or error relied on is not apparent on the face of the award. It is to be inferred from a number of extraneous circumstances revealed by village maps and an annual river reports, etc. Such a mistake is incapable of correction even by a court invested with jurisdiction by way of appeal or revision. Much less have we, sitting as a Tribunal under the specific agreement conferring on us very limited powers, any authority to interfere.

11. If Sir Cyril had merely stated that the boundary shall run from the point where the Mathabhanga takes off from the Ganges and to the point where it joins the boundary between the two thanas of Daulatpur and Karimpur, it may have been possible for us to interpret what he meant and give effect to his meaning by ascertaining as best as we can the course of the river between these two points as it existed on the date of the award. But he has gone further and drawn the boundary line between the two points imagining it to be along the course of the river Mathabhanga as he thought it was. The mistake is not one which can be said to vitiate the award and justify its rescission. To borrow the language of Lord Justice Vaghan Williams in *Re Baxters and the Midland Rail Co.* (1906), L.T. at page 22, “the Court would not remit an award to the arbitrator on the ground of a mistake by him if the mistake which is relied upon is one which involves an impeachment by him of a matter upon which he has made an adjudication”. It appears to me that we are bound by Sir Cyril’s map and his boundary line.

12. As the geographical features stand at present, and stood on the date of the award, presumably there is no point on the river Ganges from which the river Mathabhanga takes off. Had there been such a point, it was possible perhaps to argue that that point should be taken to be the starting point though in the description of the point and in the map, Sir Cyril indicated a different point. In the absence of such a point corresponding with natural features, we have to accept Sir Cyril’s point. The alternative of non-acceptance of the same leads to the consequence that the award has to be given up altogether as entirely meaningless so far as this particular boundary line is concerned. Mr. Page was good enough to concede in the course of his arguments, though his learned junior, the Advocate General of East Bengal, was not prepared to do so, that for all practical purposes the two points mentioned by Sir Cyril—the point on the river Ganges and the point where the Mathabhanga meets the boundary of the two thanas—may be taken as rigid or fixed points. On this basis, the boundary line drawn by Sir Cyril should govern us. Its mention as starting from the point where the river Mathabhanga takes off from the Ganges has to be regarded as an unessential, descriptive detail, a mistake in the statement of which cannot go to the root of the matter. This rule is embodied in Section 97 of the Indian Evidence Act, and is found in Brown’s *Legal Maxims* (9th edition, page 403) in this form: —“where the description is made up of more than one part, and one part is true but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise”.

13. The way in which the Delhi agreement is worded on this dispute appears to assume the correctness of the two points and seems only to raise the question what kind of a boundary it is—fluid or rigid. But I do not wish to be too technical on such a vital matter.

14. If however it is held that it is open to us now to find out which exactly is the Mathabhanga river and substitute the same as the boundary between the two States in

place of the Mathabhanga of Sir Cyril, we shall have to examine the available materials, in the shape of maps primarily, to see if we could find out the real Mathabhanga. I have already pointed out that the contention of Pakistan that the evidence establishes the fact that the river takes off somewhere to the north of Jalangi near or at the village of Godagaridiar or Dyrampur is really untenable. Apart from the earlier maps already referred to, the aerial maps of 1939 and 1948 (Documents Nos. 176 and 177 and 151 to 154 and 164) show clearly that the river takes off from the loop of the Ganges a little to the south-east of the Jalangi village. It is only the river commencing from this loop that can be taken as the real Mathabhanga. The boundary will then run from this offtake of the river to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur. As the boundary line must be a continuous one, we must connect the northern point mentioned by Sir Cyril and shown in his map with the offtake point of the river as now determined.

15. Where this boundary is a fluid line or a rigid one arises here also. For the reasons given by me already under Dispute No. I, which I do not wish to repeat, I hold that it is a rigid line along the middle line of the main channel of the river. The demarcation will have to be made accordingly with reference to the conditions prevalent on the date of the report, because the actual course of the river was not ruled out by Sir Cyril.

16. But as stated under Dispute No. I; if the experts of the two Dominions come to the conclusion that such a determination of the boundary will not be possible owing to the lapse of more than two years from the date of the award, we have no other alternative but to determine the middle line of the course of the river as it runs today.

17. The line has to be demarcated in execution proceedings as contemplated in paragraph 3, sub-clause (3) of the Delhi agreement.

18. The offtake point of the river as now determined shall be connected by a shortest straight line with the point nearest to it on the midstream of the main channel of the river Ganges.

N. CHANDRASEKHARA AIYAR.

APPENDIX V

Opinion of the Hon'ble Mr. Justice Shahabuddin on Dispute No. II

The boundary line concerned in this dispute is described in the concluding portion of the first sentence of paragraph 5 and in the whole of paragraph 6 of Annexure A to the Radcliffe Award. According to this description the boundary line in this case starts from the point in the north-western corner of Nadia district, where the river Mathabhanga takes off from the river Ganges and proceeds along the river Mathabhanga to the northernmost point, where that river meets the boundary between the thanas of Daulatpur and Karimpur. The last sentence in paragraph 6 is "The middle line of the main channel shall constitute the actual boundary".

The case for Pakistan is as follows: —

The boundary so described is a river boundary and Sir Cyril by this description intended the river Mathabhanga to be the boundary. Along the line delineated on the map (Annexure B) as the course of the river Mathabhanga, there was in fact no river flowing at any time. On the other hand, the river Mathabhanga before and at the date of the award took off, and at the present time takes off from the river Ganges near the village Godagaridiar, and flowed and still flows southwards as described in paragraph 2 of Pakistan's Statement of Case, and as shown in the Air Survey Map of 1948 filed by Pakistan. The delineation on the map is, therefore, clearly divergent from the description of the boundary and has consequently to be ignored.

On behalf of India, it is not disputed that there was no river flowing along the line marked on the award map as the course of the river Mathabhanga. But it is contended that

the river Mathabhanga did not, at the time of the award, even according to the air photograph map relied on by Pakistan, flow along the course that is now claimed for it by Pakistan. It is said that even according to the said air map the river takes off from the loop of the Ganges at Jalangi inside the district of Murshidabad, and that this river therefore does not conform to the description of the boundary. The Case for India is that in these circumstances what has been delineated by Sir Cyril must prevail, as he was an Arbitrator and his decision that the river Mathabhanga was flowing along the course indicated by him on the map cannot be questioned even if it be wrong. According to India, there is no divergence between the map and the description, and the boundary must therefore be a rigid boundary and it should be demarcated as per the delineation on the map.

Taking the entire description of the boundary concerned in this dispute along with the description of the boundary in the first dispute, and having regard to the fact that these two boundaries form a continuous boundary, the conclusion that the dominant idea in this description was to have a fluid boundary, appears to be irresistible. It is not necessary to repeat here the reasons, which I have already stated in my opinion on the first dispute, for my conclusion that the boundary in that case was intended by Sir Cyril to be a fluid boundary and not a rigid one. The boundary line being a continuous one and there being no ostensible reason for Sir Cyril to distinguish between the two cases when he was deciding to make the line run along the course of the river, it is only reasonable to infer that he intended the boundary in this case also to be fluid and not rigid.

The description in paragraph 6 with which we are directly concerned in this case by itself indicates that Sir Cyril intended the river Mathabhanga to be the boundary. The last sentence in that paragraph to which reference has already been made *i.e.*, "the middle line of the main channel shall constitute the actual boundary" indicates this clearly. Both the points of this boundary line *i.e.*, the point of the off-take as well as the point where the river cuts the thana boundary are, in my opinion, flexible points. It is seen from the Report of the River Engineers that the off-take has been oscillating from time to time (Document No. 146). Similarly, the other point is also subject to changes as the Mathabhanga, like its parent the Ganges, is erratic. It is no doubt true that in paragraph 5, as has already been indicated, the point of the off-take is mentioned as a point in the north-western corner of the district of Nadia, but that is only an indication of a direction and does not form an integral or essential part of the description. The indication there is of an area which was considered by Sir Cyril as the probable area within which the Mathabhanga was likely to take off from the river Ganges from time to time. He did not intend to fix any particular point of off-take or any particular area in which the river was to take off from the Ganges. The fact that the delineation on the map with regard to this river is admittedly of a course where no river was flowing indicates that Sir Cyril had an incorrect impression as to the exact course of the river Mathabhanga; but there can no doubt that he intended the river Mathabhanga to be the boundary. In the circumstances, the direction with regard to the area in which the river is likely to take off cannot be construed as restricting the dominant intention of making this boundary flexible.

There was good reason for Sir Cyril to decide upon a flexible boundary in this area as the river Mathabhanga is one of the rivers that ultimately feed the Bhagirathi, the importance of which to Calcutta was clearly realised by him. He had decided to give Calcutta to West Bengal and so he must naturally have also intended to keep this river as the boundary between the two States close to its source, so that this stretch on the river may not completely pass out of the control of the West Bengal Province. It is seen from the air photograph map (Document No. 151), the accuracy of which has not been questioned by India, that the Mathabhanga in the early part of its course gets silted and dried up at several points. This is also clear from the Report of the River Engineers (Document No. 137). It is therefore extremely unlikely that Sir Cyril would ever have favoured a rigid boundary line which would clearly open up the possibility of the head-waters of the Mathabhanga actually flowing inside the territory East Bengal. If Sir Cyril's idea had been to adopt a fixed boundary he would have selected the thana boundary from the starting point itself.

In these circumstances, the delineation on the map is clearly divergent from the description, as the delineation is not of any river but of an imaginary line. It does not seem necessary to discuss in this case whether an Arbitrator's decision has to be regarded as final even if it is based on a mistake of fact which goes to the root of the matter, for, Sir Cyril, in his award, has himself made it clear that the map is only an illustration of the boundary described and that in case of a divergence between it and the description, the latter should prevail. If the delineation in this case is preferred, it would amount to a complete disregard of his directions.

As regards the point of the off-take of the Mathabhanga the aerial photograph map of 1948 shows a channel flowing from Godagaridiar downwards which appears to be one of the loops of the river Ganges and it is also seen from the Report of the River Engineers that in some of the past years the Mathabhanga was flowing from the Ganges through this channel. There is in my opinion considerable force in the contention for Pakistan that this channel, though it forms part of the loop of the Ganges has been treated as part of the Mathabhanga itself. In this connection, the fact that reference in the description of the point of off-take is to the channel of the river Mathabhanga and not to the river Mathabhanga appears to be rather significant. However, even if the channel is regarded as distinct from the Mathabhanga and it is considered that the off-take was at the time of the award at the point mentioned by India *i.e.*, near Jalangi in Murshidabad, it cannot be said that there is no river in existence which conforms to the description. As stated already, the words "in the north-western corner of Nadia" are not a material part of the description and the off-take according to 1948 Air Survey maps is not at Jalangi itself but is almost on the north-western border of Nadia district. There is therefore a river called Mathabhanga which substantially accords with the description given by Sir Cyril.

Even if it is held that the Mathabhanga took off at Jalangi, the boundary line, which for reasons I have already stated has to be regarded as flexible, has got to pass through the channel, whether it is taken as a part of the Ganges or as a part of the river Mathabhanga. This will have to be so, even if the boundary is made rigid boundary, because, according to the description in paragraphs 5 and 6 of the annexure to the award the line is intended to be drawn from a point on the midstream of the Ganges to the off-take of the river Mathabhanga, not over land, but through this very loop of the Ganges. After all, the Mathabhanga is fed by the waters of the Ganges and I can see no objection to treating the loop through which it is fed as the channel of the Mathabhanga for all practical purposes.

I am, therefore, of the opinion that the boundary line in this case is a fluid boundary and not a rigid one, and that it should run on water along the course described in the Statement of the Case of Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga.

M. SHAHABUDDIN.

APPENDIX VI

The opinion of the Chairman on Dispute No. II

The case submitted in this dispute on behalf of the Government of Pakistan is that the middle line of the channel of the river Mathabhanga within the limits prescribed in (II) 2 in the printed statement of the case of the Government of Pakistan is and is to remain the boundary between India and Pakistan, subject only to such geographical variations as may result from changes occurring in the course of the river Mathabhanga. The limits thus prescribed are as follows:

"At and before the date of the said Award, the Mathabhanga River took off and now takes off from the Ganges near village Godagaridiar J.L. No. 170 of Daulatpur P.S. and flowed as it now flows through mauzas Udainagar Khandra, J.L. No. 169 and Muradpur Diar J.L. No. 172 of Daulatpur P.S., Muradpur Jalangi J.L. No. 30, Sahebrampur J.L. No. 33, Ikuri J.L. No. 31 of Jalangi P.S. of Murshidabad district, and mauza Madhugari J.L. No. 108 of Karimpur P.S., meeting the boundary between

thanas Daulatpur and Karimpur near the south-western corner of Char Sarkarpara J.L. No. 173 of Daulatpur P.S.”

The case submitted on behalf of the Government of India is that the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges can be ascertained by reference to Annexure B of Sir Cyril Radcliffe's Award, *i.e.*, his map, where he has shown the point at which the channel of the Mathabhanga takes off from the river Ganges. The other end of the dispute boundary is the northernmost point where the channel of the Mathabhanga meets the boundary between the thanas of Daulatpur and Karimpur. Having taken that point Sir Cyril has drawn the line from there up to the point where the river Mathabhanga according to his award, takes off from the river Ganges. The Government of India claims the land to the west of the line in Annexure B.

The relevant portion of the Annexure A of the award is as follows: —

“5. . . . to the point in the north-western corner of the District of Nadia where the channel of the River Mathabhanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal.

“6. From the point on the River Ganges where the channel of the River Mathabhanga takes off, the line shall run along that channel to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary.

“7. From this point the boundary between East and West Bengal shall run along the boundary between the thanas of Daulatpur and Karimpur; . . .”.

It is common ground that there is no dispute as to the boundary proceeding southwards from the point where the channel of the Mathabhanga meets the boundary between the thanas of Daulatpur and Karimpur.

The Government of India does not base their case on the presumption that there is, or was, at or about the time when Sir Cyril gave his award, a river Mathabhanga taking off from the river Ganges as indicated on the map attached to the award. They concede that there is no river at that place. They say that—river or no river—there is a rigid line as indicated on the map from the point where, according to the map, the river Mathabhanga takes off from the river Ganges and that the line which is to be followed at the demarcation is, so far as there is a main channel indicated on the map, the line which is equal in distance from both the shores as indicated on the map, and then the line representing the river until this line meets the northernmost point on the boundary between the thanas of Daulatpur and Karimpur.

The Government of Pakistan submit that there is a divergence between the boundary as described in Annexure A of the award and as delineated in the map in Annexure B thereof, in that, the position of the off-take and the channel of the river Mathabhanga as shown in the map is incorrect, and that, in accordance with the terms of paragraph 10 of the award, the description in Annexure A thereof must prevail.

The Government of India in this respect refers to what is said in clause 10 in the award: “The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award and in the map attached thereto, Annexure B”. The Government of India says: The demarcation is described in detail in the map as also in Annexure A. Therefore, the description is in detail in both. The map is not only for the purpose of illustration, but the demarcation of the boundary line is described in detail in the map. Sir Cyril's finding on a question of fact is conclusive. He finds the Mathabhanga channel and draws it on the map. There is no divergence between the boundary line in Annexure B and the description in Annexure A.

The Government of Pakistan replies: You must interpret a term in connection with its context. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the

map in Annexure B, the description in Annexure A is to prevail. In this case the author of the award has done two things: he has made a delineation and he has also made a description. Delineation is the marking of a red line. His delineation is quite obviously divergent from the description given in Annexure A.

I am of the opinion that it must be held that the award makes a difference between the description in Annexure A and the delineation on the map Annexure B. So far as it is possible to get a solution from the description in Annexure A the delineation on the map is only an illustration of that solution.

In this case such a solution can be found. According to the description in Annexure A Section 5 the line now in dispute shall begin at a point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges. From that point the line shall run along the channel to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur.

Air photograph maps established by way of photographs taken from the air in the year 1948 and submitted by the Government of Pakistan (Document No. 164) and an air map of 1939 submitted by the Government of India which is substantially the same as the 1948 air photograph maps, are showing a river taking off from a loop of the river Ganges not far from the point indicated on the Annexure B map. This same river is running south to the northernmost point where it meets the boundary between the thanas aforementioned.

There is no reason why this river should not be accepted as the river described in Annexure A.

The river, as reproduced on the 1948 air photograph maps (Document No. 164), corresponds with the description in Annexure A, with the exception that the place where this river takes off from the river Ganges possibly is situated in the district of Murshidabad, but anyhow quite close to the north-western corner of the District of Nadia. If there is such a difference this cannot however be considered as being of any importance. The river thus flowing must in consequence be taken as being the river Mathabhanga to which the description in Annexure A of the award refers.

The award, Annexure A, says that the boundary line shall be a line running along the channel of the river Mathabhanga and that the middle line of the main channel shall constitute the actual boundary.

The Annexure A must by that mean an existing river. The river with a channel as traced on the Annexure B map in reality does not exist.

The Government of India, however, has contended that the fact that a river with a channel, which takes off from the river Ganges drawn on the Annexure B map, must, even though there is no river at that place, be deemed a reality, the correctness of which cannot be challenged.

This would mean that where there is a divergence between what the description means, in this case an existing river, and what the map indicates *viz.*, a river existing though the river does in fact not exist, the map should prevail. This cannot be the meaning of the award.

To accept the line delineated on the Annexure B map as the boundary line would also mean to give this delineation of a line on the map the force of a description as mentioned in Annexure A. Nor would this be in conformity with the award as long as there is a description which is sufficient to give the necessary solution.

The contention of the Government of India that the point in the north-western corner of the district of Nadia where the channel of the river Mathabhanga takes off from the river Ganges can be ascertained by reference to the Annexure B map can therefore not be accepted.

According to my opinion the beginning of the boundary line shall therefore be the point in or close to the north-western corner of the district of Nadia where the channel of this river takes off from the river Ganges.

There has been some difference of opinion concerning the place where the off-take of the river Mathabhanga is situated. According to my opinion the river Mathabhanga must be held to take off from a loop which forms a part of the river Ganges. This off-take is situated west-south-west of the police station and the camping ground of Jalangi village as these are shown on the air photograph map (Document No. 164). The river Mathabhanga then flows from that off-take southwards to the northernmost point where it meets the boundary between the thanas of Daulatpur and Karimpur.

There is not, as in Dispute I, any expression in the award indicating that the boundary line should not follow the line of a flowing stream, with, as is said in the printed statement of the case of Pakistan, such geographical variations of that stream as may result from changes occurring in the course of the river.

There is of course the fact that in the description of the award the channel of the river Mathabhanga is mentioned as taking off from a point in the north-western corner of the district of Nadia. But the purpose of mentioning the area from which the river is flowing should be taken as being made more for an identifying purpose than for establishing any fixed point of off-take.

The boundary line in question shall therefore follow not a rigid line from the off-take of the river Mathabhanga but the middle line of the main channel as it is flowing, down to the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur.

The boundary line running along the boundaries between the districts of Rajshahi and Murshidabad and the districts of Rajshahi and Nadia must be connected with the boundary line beginning where the channel of the river Mathabhanga takes off from the river Ganges. The whole boundary line must of course be continuous. A connecting boundary line must therefore be drawn from the boundary line going along the district boundaries aforementioned, to the beginning of the boundary line formed by the middle line of the main channel of the river Mathabhanga beginning at the off-take of the river Mathabhanga as described.

This connecting boundary line must follow the shortest way from the beginning of the middle line of the main channel of the river Mathabhanga to the boundary line between the districts of Rajshahi and Nadia.

My conclusion is therefore that the boundary between India and Pakistan shall run along the middle line of the main channel of the river Mathabhanga which takes off from the river Ganges in or close to the north-western corner of the district of Nadia at a point west-south-west of the police station and the camping ground of the village of Jalangi as they are shown on the air photograph map of 1948, and then flows southwards to the northernmost point of the boundary between the thanas of Daulatpur and Karimpur.

The point of the off-take of the river Mathabhanga shall be connected by a straight and shortest line with a point in the midstream of the main channel of the river Ganges, the said latter point being ascertained as on the date of the award or if not possible as on the date of the demarcation of the boundary line in Dispute I. The said point so ascertained shall be the south-easternmost point of the boundary line in Dispute I, this point being a fixed point.

Algot BAGGE.

APPENDIX VII

*Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar
on Dispute No. III*

This relates to the claim made by the contending States to the Patharia Hill Reserve Forest, which is shown in the coloured index map filed on the side of India (Doc. 185). Part of it is thana Kulaura (No. 5), but with this we are not concerned. Another part to the north indicated by the letter "B" and in thana Karimganj (marked I) is also beyond the scope of the present dispute. It has become a disforested area. We are concerned only with the white portion of the forest in thana Barlekha (No. 3) and the blue portion in thana Patharkandi (No. 4).

2. Thana Beani Bazar (No. 2) and thana Barlekha (No. 3) were originally one thana Jaldhup. The boundaries of thana Jaldhup are found in the notification of the 1st July 1880 (Doc. 200). The eastern boundary is the important one for our present purposes. This thana Jaldhup was split up into two thanas Beani Bazar and Barlekha by notification No. 5133-H, dated the 28th May 1940 (Doc. 204) and published in the Assam Gazette dated the 5th June 1940, Part II, page 991. The preliminary notification was No. 6214-H dated the 2nd September 1938 (Doc. 203) published in the Assam Gazette dated the 7th September 1938, page 1203.

3. Patharkandi was a police outpost till 1922 when it became a thana according to a notification dated the 10th January 1922 (Doc. 202).

4. The forest in question was declared to be a reserve forest with effect from the 15th May 1920 under section 17 of the Assam Forest Regulation 1891. The notification is No. 3698F of the 27th April 1920 (Doc. 201). The approximate area is given as 27,600 acres and the boundaries on all the four sides are mentioned in detail.

5. In making his award, Sir Cyril used the Sylhet district map signed by Mr. Creed, Superintendent of Assam Surveys, on the 22nd April 1937 (Doc. 184). It would be seen that it is the right-hand side portion of a fuller map. The full map has been filed by Pakistan (Doc. 256). It is said that a copy of it printed in 1947 and containing some minor alterations was actually before Sir Cyril.

6. In paragraph 13 of his report, Sir Cyril said—

"Accordingly I decide an award as follows—

"A line shall be drawn from the point where the boundary between the thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between these thanas, then along the boundary between the thanas of Patharkandi and Barlekha, then along the boundary between the thanas of Karimganj and Barlekha, and then along the boundary between the thanas of Karimganj and Beani Bazar to the point where the boundary meets the river Kusiya."

This is the red line in the map used by Sir Cyril and it would be seen that the line cuts across the Patharia Hill Forest leaving the white and the pink portions in the index map to the west of it and the remainder to the east of it.

7. Another sentence in paragraph 13 of the report is also relevant and important. It is this—

"So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred."

("North of this line" is the Kusiya line involved in the next dispute.)

8. The case for India is that the whole of the forest, the white portion inclusive, belongs to them under the award inasmuch as the Barlekha notification of 1940 expressly excluded the forest from the Barlekha limits in giving the eastern boundary and that consequently the whole area forms part and parcel of Patharkandi, even though there was

no fresh notification or order including it in that thana. It is urged by them that in any event dominion of Pakistan can have no right or claim to the blue portion as it is to the east of the boundary line drawn by Sir Cyril who has taken special care to say that only so much of the district of Sylhet as lies to the west of this line shall go to East Bengal and that no other part of the Province of Assam shall be transferred.

9. The case for Pakistan is, on the other hand, that the whole area belongs to them. Their contention is that the notification of 1940 excluding the forest from the limits of Barlekha was based upon some error, confusion or mistake, that the notification itself was illegal or void, that it was never acted upon, and that despite its existence Barlekha exercised jurisdiction over the forest. In any event it is contended that they should get the white portion at least on the basis of Sir Cyril's Award.

10. It is true that Sir Cyril made a mistake in thinking that the thanas of Patharkandi and Barlekha had a common boundary line between them. As a matter of fact, there was no such boundary line. According to the 1940 notification the Patharia Hill Forest was the eastern boundary of Barlekha. The western boundary of Patharkandi thana as given in the 1922 notification was—

“Mauzas Sheoratali, Grantala, Kechrigul, Dakingul, Barkhala in thana Jaldhup; Patharia Hills in thanas Jaldhup and Hingajiya; and Hill Tippera”.

11. The 1937 map which he had before him or its reprint or copy of 1947, apparently misled him into thinking that there was a common boundary line, while there was none in reality. This mistake on his part has given rise to the present trouble and the rival claims on behalf of India and Pakistan.

12. It would be seen from a comparison of the map of 1937 used by Sir Cyril and the map of the district of Sylhet alleged to have been prepared in 1947 for Sir Cyril's use in connection with his award that the red line he has drawn from south to north proceeds up to a particular distance on the subdivision boundary line, and on the forest boundary line from that point till we reach the extreme north-western limit of the forest (inclusive of bloc B). This north-western limit is a little to the south-east of latu and north-west of 222 with a triangle to its side. Sir Cyril assumed, for some reason not known to us, that this was the common boundary line between the two thanas of Barlekha and Patharkandi.

13. Certain facts are incontrovertible. The Patharia Hill Reserve Forest after it was constituted as such under the Forest notification of 1920 was comprised within four areas—Jaldhup, Karimganj, Patharkandi and Kulaura. This is made clear not only by the village boundaries of Jaldhup and Karimganj given in the first notification of 1880 (Doc. 200) but also by the Forest notification and the notification of 1922 where we find the Patharia Hills mentioned in Patharkandi, Jaldhup and Karimganj. This is also apparent from the Karimganj thana map filed on India's side (Doc. 184), where reference is made near the south-western corner to the Patharia Hills Reserve Forest within the thana limits and to the Patharia Hills Reserve Forest within thana Patharkandi limits. The Patharkandi outpost map (Doc. 189)—T-4—on India's side shows a part of the Patharia Hills within the boundary of that outpost and to the east of thanas Kulaura and Jaldhup. The Jaldhup thana map Ex. T-7 (Doc. 192) leads to the same result, if we have regard to the village boundaries given in the 1880 notification. A part of the Patharia Hills is within Jaldhup and there is a part to the east of it in the Patharkandi outpost. It may be taken as clear therefore that the reserve forest was comprised within the several thanas aforesaid. When Jaldhup thana was subdivided into two—viz., Beani Bazar and Barlekha—the eastern boundary of Barlekha was mentioned as the western boundary of the Patharia Hills Reserve Forest. This undoubtedly excludes the forest from Barlekha thana limits. It was admitted on the side of India that there was no corresponding inclusion of the forest area in the Patharkandi thana limits, but it was contended for that Dominion that as the forest lies between the two thanas it must belong to Patharkandi if it did not belong to Barlekha. The learned Advocate General of East Pakistan conceded that the forest must belong either to one or to the other of the two thanas.

14. What is important to remember is that at no time was the Patharia Hill or the reserve forest going by that name entirely within the jurisdiction of Jaldhup so that it could be said that when Barlekha thana was created it passed over into its jurisdiction. On the other hand, we find from the two express notifications of 1938 and 1940, the latter one based upon the former, that the Patharkandi Hill Forest was excluded from Barlekha.

15. The Dominion of Pakistan had consequently an uphill task to show how the entire forest could be said to belong to them. This was sought to be established on several lines of reasoning. The main argument was that the notifications of 1938 and 1940 excluding the forest from the Barlekha thana altogether were based on error and that the notifications were illegal in themselves. The second line of reasoning was that they had been exercising jurisdiction over the forest by way of police proceedings, census operations and registration of pedal cycles under the Defence of India Rules. It was lastly pointed out that the circle map of Patharkandi (Doc. 243) referred to the forest as beyond the circle limits to the west and north-west.

16. It is somewhat difficult to follow the argument that the notifications were illegal. It may be that there are rules to the effect that when an area is proposed to be transferred from one thana to another the officers concerned with the proposal should specify the area clearly, the reasons suggested for the transfer and the new station to which it is proposed to be transferred. Such rules are for the superior officers to make up their mind whether the transfer suggested is reasonable and should be made. The fact that there is an omission to specify the area may be a reason for returning the papers for the supply of the omission or for reprimand of the officer or officers concerned, but to say that because of the omission the notification of the Governor-in-Council is itself invalid or of no legal effect, is to say something which is wholly unacceptable and unsound. The Governor-in-Council has absolute powers to alter the limits of thanas, extinguish old thanas, and bring into existence new ones; and once we have a notification published in the Gazette, it is valid and binding until it is altered, modified, or set aside legally, by a fresh notification or other process laid down by law. It is a well-known principle of law that minor irregularities of procedure do not affect jurisdiction. The contention that the notification remained a dead letter and that the subordinate officers in the district—revenue, police or the census departments—acted on the footing that there was no such notification but treated the forest as within Barlekha limits, cannot, even if it be true on the facts, adversely affect the validity or legality of the notifications.

17. It may be that Barlekha police registered crime cases of the village called Patharia Test or the sannyasi settlement named Madhabkund—both of them alleged to be within the forest limits; it may also be that the census operations relating to those living in the forest were done by the Barlekha officials; but these are insignificant factors in themselves and are all of no avail in the face of the notification. So is the circumstance that under the Defence of India Rules some three or four cycles of Patharia Test were registered at the Barlekha police station. The maps would show that the Patharia Test is very near, if not almost on, the western border of the forest and there need be no surprise if Barlekha thought that it had jurisdiction over it notwithstanding the notification of 1940. It takes time for such notifications to filtrate to the subordinate officers in out-of-the-way stations, not to speak of the public, and there is nothing strange if the old state of affairs was continued as correct. Exercise of jurisdiction over a particular locality in a big forest area does not mean assumption of jurisdiction over the whole forest, much less would it be a case of possession.

18. Then we have the Patharkandi circle map (Doc. 243). The circle map is admittedly a map prepared for revenue purposes and sometimes comprises several thanas or parts of thanas. Its evidentiary value on a question like the one we have before us for decision is practically nil.

19. The resulting position is a simple one, rather. The forest was constituted a reserve forest with effect from the 15th May 1920, and according to the notification of 1922 there were Patharia Hills to the east of Jaldhup in the Patharkandi thana and Patharia Hills to the west of Patharkandi in the Jaldhup area. It is fairly apparent that the reserve

forest in Jaldhup represents the white portion and the reserve forest in Patharkandi represents the blue portion in the index map filed on the side of India. The 1940 notification removes the white portion altogether from Barlekha but does not say that it must go to Patharkandi. This, however, does not matter. Even Mr. Faiz Ali had to admit in the course of his arguments that if any portion of it did not belong to Barlekha, it must go to Patharkandi.

20. The claim of Pakistan to any portion east of the boundary line drawn by Sir Cyril is on the face of it unsustainable, as he had expressly said that it is only so much of the district of Sylhet as lies to the west of this line shall be transferred to the Province of East Bengal and no other part of the Province of Assam shall be transferred.

21. However untenable the case of Pakistan is even as regards the white portion of the forest, the fact still remains that Sir Cyril drew his line, which he thought mistakenly was the eastern boundary line of Barlekha, so as to include the said area within Pakistan territory. The line cuts the forest into two from south to north, and the white portion is to the west of his line. He says in so many words that all area which is to the west of the line shall go to Pakistan. With the map annexure "B" before him, there can be no doubt that he was aware that he was giving away a portion of the forest, *viz.*, the white portion, to Pakistan. The mistake in describing the line as the boundary between Barlekha and Patharkandi need not stand in the way of his intention being carried out. I would, therefore, award the white bit of the forest—by the "white bit" I mean what is shown as such in the index map filed on the side of India—to Pakistan. The actual division shall be carried out accordingly.

N. CHANDRASEKHARA AIYAR.

APPENDIX VIII

Opinion of the Hon'ble Mr. Justice Shahabuddin on Dispute No. III

This dispute relates to a major portion of the Patharia Hills Reserve Forest. The following facts, for the sake of convenience, may be stated before setting out the contentions on both sides.

This forest, when it was constituted in 1920, comprised portions of Kulaura and Jaldhup thanas and of a portion of the old Karimganj thana. There is no dispute about the portion of the forest in Kulaura thana which is in East Bengal; nor is there any dispute about the south-west portion of the forest lying in the present Karimganj thana. Prior to the constitution of this forest, the area now in dispute fell partly in Jaldhup thana and partly in the old Karimganj thana, and the boundary line between those two thanas as defined in the notification of 1880 ran across the southern half of the forest. According to this boundary line a portion in dispute fell in the Jaldhup thana and the rest in the old Karimganj thana. In 1922 Patharkandi outpost of the old Karimganj thana was made into a thana and in this connection the boundaries of all the thanas in Sylhet district were notified. In the description of the boundaries of thana Jaldhup and the new Patharkandi thana no mention was made of the reserve forest, but it was stated that the western boundary of Patharkandi comprised the Jaldhup portion of Patharia Hills and the eastern boundary of Jaldhup thana comprised the Patharkandi portion of Patharia Hills. This description of the boundaries between Jaldhup and Patharkandi was considered by Police Officers as vague (Document No. 226) and the correspondence filed before us (Documents Nos. 227-233) shows that there was a proposal to renotify the boundaries of Patharkandi thana by stating clearly that its western boundary would be the eastern boundary of the Reserve Forest, but no notification to that effect was actually issued. In 1938 a preliminary notification was issued stating that it was proposed to divide the old Jaldhup thana into Barlekha and Beani Bazar thanas to transfer to Beani Bazar certain circles of Karimganj thana. In 1940 the final notification was issued, dividing the old Jaldhup thana into the present thanas of Beani Bazar and Barlekha, but although it was

not specifically stated that any portion of the Jaldhup thana was being excluded from the new thana of Barlekha, its eastern boundary was described as the western boundary of the forest. There was however nothing in the notification to indicate any intention of including the Jaldhup portion of the forest into the Patharkandi thana. In 1937, a map (Document No. 256) was drawn up showing the new thanas of Beani Bazar and Barlekha although the old Jaldhup thana had not till then divided, and in this map in which this division was apparently anticipated, the boundary between Barlekha and Patharkandi was shown to be the same as it was between the old Jaldhup and the old Karimganj thanas in accordance with the notification of 1880. In 1947 this map was brought up to date and printed, noting therein various changes that has occurred since 1937; but in this map also the boundary line between Patharkandi and Barlekha was delineated as it was in the old 1937 map. Sir Cyril used this 1947 map for delineating the boundary between East Bengal (Pakistan) and the Assam Province (India).

Both the Dominions—India and Pakistan—claim the entire portion of the reserve forest in dispute. India contends that the 1940 Notification excluded the old Jaldhup portion of the reserve forest from the new Barlekha thana, and that though there was no Notification including that portion of the forest into Patharkandi thana, it could not be regarded as still in Barlekha thana, as Sir Cyril in his award has definitely stated that no portion of Sylhet to the east of the boundary line described in the award should belong to Pakistan. The line delineated by Sir Cyril on the map corresponds to the boundary that existed according to the 1880 Notification which had included in Jaldhup thana a portion of what is now the reserve forest. It is contended that this delineation is divergent from the description and should be ignored and that the boundary should run according to the description in the 1940 Notification excluding Jaldhup portion of the Patharia Hills Reserve Forest from the thana of Barlekha.

The case of Pakistan, on the other hand, is to the following effect:

The 1940 Notification was not intended to exclude from the old Jaldhup thana any portion of its area. Its only purpose was to divide the old Jaldhup thana into the thanas of Beani Bazar and Barlekha. This is clear from both the preliminary and the final Notification. The description of the eastern boundary of Barlekha thana in both these Notifications was obviously due to an error, and that entry by itself cannot have the legal effect of excluding the Jaldhup portion of the forest from Barlekha. The 1940 Notification does not and cannot therefore affect the forest. The line delineated on the map however is divergent from the description, because the boundary between Barlekha and Patharkandi ran in fact along the eastern boundary of the reserve forest. The revised notification of 1929 was vague and indefinite about the boundaries of the forest, as it referred only to Patharia Hills and not to the forest. The Police Officers uniformly acted on the basis that the Barlekha thana had jurisdiction over the entire forest. This fact in view of the vagueness of the Notification of 1922, is of considerable importance and supports the claim of Pakistan not only to the Barlekha portion of the forest but also to the portion of forest which according to India is included in the Patharkandi thana.

The respective portion of the forest in question may conveniently be referred to hereafter with reference to the colour in which they have been shown in the Index Map filed for India. The portion of the forest which was in the old Jaldhup thana is shown in white, and that in the old Karimganj thana which according to India fell into the Patharkandi limits appears in blue.

The contention of Pakistan that the Notification of 1940 does not legally affect the white portion has in my opinion to prevail. It is clear from the Assam Police Rules that whenever any portion of a thana is to be excluded from its jurisdiction notice of such a proposal has to be given to the public and objections invited. Such a procedure is necessary as the convenience of the people has to be taken into consideration while changing the jurisdiction of a thana. As stated already there is nothing in the notification apart from the description of the boundaries which can be said to indicate that the intention of the Government issuing the notification was to exclude from thana Barlekha the old Jaldhup portion of the forest. If the Government had such an intention, it is unthinkable that they

would have failed to notify in the preliminary notification of 1938 that the forest portion of Jaldhup thana would be excluded in the formation of Barlekha thana. The mention in the preliminary notification of the proposal to transfer to the new Beani Bazar thana some of the circles of Karimganj thana shows that the rule that proposals to transfer an area should be notified was being followed. The fact that there was no corresponding notification transferring the white portion *i.e.* the forest area of old Jaldhup thana to Patharkandi thana in itself clearly indicates that the Government did not intend to exclude any forest area from thana Barlekha and transfer it to thana Patharkandi. Similarly the fact that the map of 1947 in which several changes that had occurred since 1937 were embodied continued to show that the Jaldhup portion of the forest fell inside thana Barlekha, is yet another strong indication that the notification of 1940 was not intended to, and did not in fact, exclude the said forest area from Barlekha thana. Documents Nos. 234-236 prove that Barlekha police exercised jurisdiction over the village of Patharia Test most of which, including the oil wells, lies in the white portion *i.e.*, the old Jaldhup portion of the forest. In the Census Operation of 1941 (Documents Nos. 237 and 257) the village Patharia Test was shown as lying within the jurisdiction of Barlekha.

In these circumstances, the conclusion that the description of the eastern boundary of Barlekha in the 1940 notification must be an error, becomes irresistible. The said description has, therefore, no legal effect as far as the forest in question, *i.e.*, the portion in white in the index map is concerned and the only legal effect of that notification was the division of old Jaldhup thana into the new thanas of Beani Bazar and Barlekha without any reduction of the original area.

Even if it is assumed for argument's sake that the notification of 1940 had the legal effect of excluding the forest portion of the old Jaldhup thana, that portion *i.e.*, the white portion cannot be claimed by India in view of the fact that there was no notification including that portion in the Patharkandi thana. Without such a notification that portion of the forest cannot be considered to have become part of the thana of Patharkandi. If the white portion, *i.e.*, the portion of the forest which according to India has been excluded from Barlekha by the 1940 Notification does not become part of Patharkandi, there can be no common boundary line between that thana and the thana of Barlekha. The boundary line in this area as described in paragraph 13 of the award runs along the boundary between these two thanas, and if there happens to be no boundary between those two thanas India cannot claim the intermediate area for Assam on the strength of the concluding part of paragraph 13 of the award, which is as follows: —

“So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.”

The words “this line” refer to the line described in the earlier part of the paragraph as running along the boundaries of the thanas noted in that paragraph, including the thanas of Barlekha and Patharkandi. If this line fails, India cannot rely on paragraph 13 of the award, and under Section 3, sub-section 3 (a) and (c) of the Indian Independence Act 1947 this area shall have to be treated as part of East Bengal and as excluded from Assam.

I therefore consider that India's claim in this respect cannot be allowed either on facts or in law and that the portion in white must be regarded as part of Barlekha thana *i.e.* part of Pakistan.

It now remains to consider the claim of Pakistan to the portion of forest marked in blue on the Index Map, which according to India is in Patharkandi thana. On behalf of Pakistan reliance is placed in this respect on Documents Nos. 243-245 and 234-236 to show that the police of old Jaldhup prior to 1940 and the Barlekha police since that year have been exercising jurisdiction over the blue portion of the forest also. Document No. 237 has been filed to show that in the Census Operations of 1941, residents of Patharia Test, which extends into the blue portion also, were treated as within the jurisdiction of Barlekha thana. Reliance is placed on Documents No. 243 and 245 to prove that the two cases mentioned therein relating to Madhabkund village, which is on the eastern fringe of

the forest, were dealt with by the old Jaldhup and the Barlekha police respectively. The map of Patharkandi circle of the year 1934 has also been filed as it shows that the Patharia Hills Reserve Forest was not inside the circle but outside it as the western boundary of thana Patharkandi. No documents showing that Patharkandi police exercised jurisdiction over any portion of the forest has been filed for India.

These documents and the circle map no doubt support the position taken by Pakistan that in fact jurisdiction over the white and blue areas of the forest was exercised by Jaldhup and Barlekha police and that the Police Officers considered the description of boundaries in the 1922 notification as vague and regarded the forest as entirely outside Patharkandi limits. But on a consideration of the boundaries mentioned in the 1922 notification I am not satisfied that they are vague as Patharia Hills mentioned therein cannot be said to exclude the forest. Further the proposal made by the officers to renotify the boundaries so as to exclude the forest from Patharkandi limits was not ultimately followed by the required notification. In the circumstances it cannot be said that the notification of 1922 excluded from the Patharkandi thana the old Karimganj portion of the forest or that there was in law a transfer of that portion to thana Jaldhup. In the absence of a notification effecting such a transfer mere exercise of jurisdiction cannot legally alter the boundary.

I am, therefore, of the opinion that the boundary line delineated on the map of the award accords with the description given in the award, that that line should be the boundary line in this area and that the portion of the forest to the west of that line *i.e.*, the portion shown in white in the Index Map should be awarded to East Bengal (Pakistan) and the portion to the east of the line *i.e.*, the portion shown in blue in the Index Map to the Province of Assam (India).

M. SHAHABUDDIN.

APPENDIX IX

The opinion of the Chairman on Dispute No. III

The case submitted in this dispute on behalf of the Government of India is that India claims the portion of the forest being to the west of the boundary line demarcated on the map "A" attached to the award.

The case submitted on behalf of the Government of Pakistan is that the true interpretation of paragraph 13 in the award is a boundary running along the eastern boundary of the Patharia Hills Reserve Forest from the point at which the boundary between thanas Kulaura and Patharkandi, as determined by the award, cuts the south-eastern boundary of the Reserve Forest northward up to the point at which the eastern boundary of the Reserve Forest meets the southern boundary of thana Karimganj.

According to the award the line shall be drawn along the boundary between the thanas of Patharkandi and Barlekha, and then along the boundary between the thanas of Karimganj and Barlekha, and then along its boundary between the thanas of Karimganj and Beani Bazar.

The thana Patharkandi did not exist as such until 1922 and the thana of Barlekha was constituted in 1940. Before that there existed two thanas *viz.*, Jaldhup and Karimganj, which had a common boundary. This boundary coincides with the line delineated on the map "A" by Sir Cyril Radcliffe. In 1920 the Patharia Hills Reserve Forest was formed. It appears from the description of the boundaries of the forest that the boundary line of Jaldhup thana cut the forest into two, the major portion being to the east of the boundary line and a small portion to the south-west. In 1922 Patharkandi which was till then an outpost of the Karimganj thana was converted into a thana. The west boundary of Patharkandi was described *inter alia* as Patharia Hills in thana Jaldhup. In the same notification the east boundary of Jaldhup was described *inter alia* as Patharia Hills of thana Karimganj and Patharia Hills of thana Patharkandi. By a notification of May 28th

1940 the thana of Jaldhup was split up into two thanas, namely Barlekha and Beani Bazar. The eastern boundary of thana Barlekha was described *inter alia* as the western boundary of the Patharia Hills Reserve Forest. The Jaldhup portion of the forest was not included in the thana of Barlekha or in the thana of Beani Bazar. No corresponding notification of the thana of Patharkandi was made including this portion within its ambit.

The Government of India base their case on the facts that when the thana of Jaldhup was split up into two thana, namely, Barlekha and Beani Bazar, and when the notification of 1940 constituted these thanas and described their boundaries, the Jaldhup portion of the forest was excluded from the new thana of Barlekha. Sir Cyril Radcliffe has in his award described the Inter-Dominion line in terms of thana boundaries. The line shall run along the boundary between the thanas of Patharkandi and Barlekha. Sir Cyril's line of demarcation in his Map "A", which is attached to the award, leaves, however, the portion of the forest thus excluded from Barlekha as if it were in Barlekha. For the purpose of illustration Sir Cyril adopted the map of 1937. But he has provided that in case of any divergence between the map and his description, the description will prevail.

The Government of Pakistan submits as a basis for their claim to the whole of Patharia Hills Reserve Forest as follows; For a number of years up to the date of the award and thereafter when occasion arose for the exercise of police jurisdiction within the boundaries of Patharia Hills Reserve Forest, such jurisdiction was exercised by thana Jaldhup up to 1940 and thereafter by thana Barlekha. In the year 1934, when a circle map of Patharkandi Circle was made, that circle did not extend to any part of Patharia Hills Reserve Forest. In the year 1941, the official Census Report included in thana Barlekha persons resident within the boundaries of that forest.

As regards especially Barlekha the Government of Pakistan submit:

(a) that while the expression "along the boundary between the thanas of Patharkandi and Barlekha" in paragraph 13 of the Award is unambiguous, the delineation of that boundary in the map "A" attached to the Award is incorrect in that it does not show the boundary as stated in the Award; and that, in accordance with the terms of paragraph 14 of the Award, the description of the boundary in paragraph 13 of the Award must prevail;

(b) that the description of the eastern boundary of thana Barlekha in the preliminary notification, dated 2nd September 1938 and in the final notification, dated 28th May, 1940, was made by error; and the said notification was not made in accordance with the requirements of Rule 203 of the Assam Police Manual and the form thereby prescribed and was therefore illegal; and that it was also not acted upon;

(c) that if, on the other hand, the said notification is a valid and effective notification to alter the boundaries of thana Barlekha, there was, in such a case, at the date of the Award, no common boundary between thana Barlekha and thana Patharkandi.

As regards the claim of India to the Jaldhup portion of the forest excluded from Barlekha by the notification of 1940 and Pakistan's claim to that same portion it is established that there does not exist nor did it exist at the time of the award any such common boundary between the thanas of Patharkandi and Barlekha as provided in the award.

The boundary cannot therefore be decided only by reading the description in the award. It is true that generally the map "A" attached to the award only serves the purposes of illustration, but this principle involves a description in the award which is complete and which makes it possible to draw the line after it.

If the description is incomplete we must be allowed to use the map not only as an illustration to the description but also as affording the necessary completion of the description.

The Government of India has submitted that regard should be had to the prescription in the award that so much of the district of Sylhet as lies to the west and north of the described boundary line *i.e. inter alia*, the line running along the boundary between the

thanas of Patharkandi and Barlekha, shall be detached from the Province of Assam and transferred to the Province of East Bengal. This submission does not seem to solve the difficulty, as no such common boundary between the thanas Partharkandi and Barlekha does exist and the boundary line as demarcated on the map has been drawn along the old common boundary line between the thanas of Patharkandi and Jaldhup. With regard to that fact and to the fact that the description provides a common thana boundary line the Jaldhup portion of the forest must be treated as if it belonged to the thana of Barlekha.

As to the claim of Pakistan to the portion of the forest situated in the thana of Karimganj I cannot find that what has been put forward as arguments for such a claim are convincing. Even if there may have been police jurisdiction by the thana Barlekha exercised somewhere in the forest neither this nor the other circumstances relied on by the Pakistan Government can be considered to constitute a boundary thana line as provided in the description of the award. Even here replies what has been said as regards the portion of the forest claimed by India.

My conclusion is therefore that the line indicated in the map marked "A" attached to the award is the boundary between India and Pakistan.

Algot BAGGE.

APPENDIX X

Opinion of the Hon'ble Mr. Justice N. Chandrasekhara Aiyar on Dispute No. IV

Paragraph 13 of Sir Cyril's report is in these terms—

"In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows:—

"A line shall be drawn from the point where the boundary between the thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those thanas, then along the boundary between the thanas Patharkandi and Barlekha, then along the boundary between the thanas of Karimganj and Barlekha, and then along the boundary between the thanas of Karimganj and Beani Bazar to the point where that boundary meets the river Kusiya. The line shall then turn to the east taking the river Kusiya as the boundary and run to the point where that river meets the boundary between the districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the district of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred."

2. In his map—annexure "B" to the report—the line is drawn from A to B northwards and from B to C eastwards. B is above the place marked Birasri and C is to the east of Amalsid. According to Sir Cyril, B to C is the course of the Kusiya river.

3. The case for Pakistan is that B to C does not represent the course of the Kusiya river but that it is the course of the Boglia river. According to them, the real Kusiya runs to the south of Karimganj town from Nilam Bazar and that flowing westwards from there it joins some other stream or streams and becomes Kusiya from Bairagi Bazar downwards.

4. It is only out of deference to the learned Advocate General of East Bengal that I propose to take a few minutes over this contention. It is totally devoid of any substance.

5. We are not at all concerned with ancient maps (survey or thak) which give the name Kusiya to some other stream or channel, or which mention Pooran Kusiya or Langai or Sonai or Sonal. The map of 1937 which Sir Cyril had before him shows very

clearly the course of the stream. It lies to the north of Bairagi Bazar, and Birasri (which is slightly to the north-east of his point B), and from there the course is along the red line up to the point C. It has the name "Boglia R." given to it below Amalsid and above Bhanga in Badarput.

6. Sir Cyril had abundant material before him, apart from the particular map, to assume that BC represented the course of the Kusiya river; and his assumption was correct, whatever the remote history may have been.

7. The India documents mostly consisting of maps and notifications, and Imperial and District Gazetteers, establish this beyond doubt or controversy. I do not propose to refer to all of them. It is enough to draw attention to the revenue survey map, marked Doc. 338, —which is based upon the circuit maps which follow it (Docts. 384 to 395)—and the maps Doc. 396 and Doc. 397. The Karimganj Municipality map drawn in 1915 is Doc. 399. The topographical maps are Docs 410, 402 and 403. The Imperial Gazetteer of India 1887 by Sir William Hunter (Doc. 344) mentions that the river Barak which flows from Cachar forthwith bifurcates into two branches, Surma in the north and Kusiya in the south. To the same effect is the Imperial Gazetteer of 1909 (Doc. 346). The Assam District Gazetteer (Doc. 345) mentions the river from C to B as Kusiya. The Illam settlement officer's report (Doc. 351) at page 67 of India's documents confirmed by the order of the Governor of Assam in Council at page 69 shows Sir Cyril's river as the Kusiya. It is really futile, after all this, to contend that Sir Cyril was not justified in assuming that the river between B and C was Kusiya.

8. It is very common for the same river to be known by different names at different places or different sections of its course. Boglia may well be the name of Kusiya in some part of it. In fact, Sir Cyril had the name "Boglia R." before him when he drew his line.

9. But even conceding for a moment that Sir Cyril was wrong in thinking that BC was Kusiya, what follows? The river course was there, he took it to be Kusiya; and said that it should be the boundary between the two Dominions. He had every right to say so.

10. The position taken by Pakistan leads to a patent absurdity. Points B and C cannot be reached at all if Kusiya is what Pakistan would have it to be. The line BC would fail altogether and there is no alternative line to choose even if we are authorised to do so. It will be the substitution of a fresh line altogether. Mr. Faiz Ali had to admit this and settle down to the concession that on equitable grounds he was prepared to take a portion of the course BC as Kusiya.

11. The argument that under our terms of reference we have only to find out the course of the river Kusiya and not determine whether BC was properly determined as the boundary by Sir Cyril needs no serious attention much less refutation. It is because of the dispute between the two Dominions as regards BC that we have been asked to state or determine what is the course of the river. It is not for purposes of abstract geography or history or in the interests of antiquarian research that this Tribunal has been constituted.

12. BC is the correct course of the Kusiya river and Sir Cyril's award that it shall be the boundary between the two States must be given effect to.

13. I may add a word about the boundary line proceeding north from the north-western corner of the Patharia Hill Forest up to the point B in the map (near Birasri). There are no adequate grounds for holding that this is not a correct delineation of the boundary. Therefore, this portion of the western boundary line as shown in Sir Cyril's award map will also stand.

N. CHANDRASEKHARA AIYAR.

APPENDIX XI

*Opinion of the Hon'ble Mr. Justice Shahabuddin
on Dispute No. IV*

This dispute relates to a portion of the boundary line dividing, between East Bengal (Pakistan) and Assam (India), the district of Sylhet as it was prior to the partition of 1947. This boundary is described, in paragraph 13 of Sir Cyril Radcliffe's Report of the Bengal Boundary Commission relating to Sylhet district and the adjoining districts of Assam, as running along the Kusiya river.

In the map of the district of Sylhet Sir Cyril has delineated this boundary by a line coming from point "A" and extending up to the point "B" which lies on a river that flows from Cachar towards the west and thence in a south-westerly direction. The line then proceeds from point "B" to point "C" in the map where the river branches off from the Barak river of Cachar. Near point "C" in the map the river is described as Boglia river. There is no other name written on the map till the river turns in a south-westerly direction, and when it takes this turn its name is mentioned for the first time in the map as river Kusiya. Lower down to the south of point "B" the boundary between the thanas of Beani Bazar and Karimganj meets a river flowing from the east in a south-westerly direction and its name is noted on the map as river Sonai. This river at its eastern end near Karimganj town is a bifurcation from the river described as Boglia at its off-take from the river Barak. For the sake of convenience, the river named Sonai in the map will hereafter be referred to as the "southern river" and the other river *i.e.*, the one which is marked as the boundary between points "B" and "C" on the map, as the "northern river".

The case for Pakistan is as follows:—

The southern river was wrongly named in the map as Sonai. It is in fact the river Kusiya, and has been bearing that name both in the past and the present. On the other hand the northern river is named Boglia and not Kusiya. The description of the boundary in this area clearly refers to the Kusiya river and not to any other river, and also in the terms of reference to this Tribunal the specific question raised with regard to the dispute is about the course of the river Kusiya. It has, therefore, to be determined whether the northern river is the river Kusiya or the southern. The delineation of the boundary in the map is wrong on account of serious mistakes of facts which have resulted principally from the wrong naming of these rivers on the map. There is therefore a divergence between the map and the description and the map has to be ignored. The southern river turns eastwards after the boundary between the thanas of Karimganj and Beani Bazar meets it, but it does not, strictly speaking, by itself reach Cachar. This would result in the boundary remaining undetermined in part and in order to avoid that contingency a proper and equitable solution of the difficulty is that the boundary line should be held to run along the southern river up to the point where it draws its waters from the northern river through Noti Khal and thence along the eastern portion of the northern river to the Sylhet-Cachar boundary. This would amount to a just and reasonable implementation of the dominant intention of Sir Cyril which was to make the river Kusiya a boundary between Assam and East Bengal.

The case on behalf of India is that the southern river is known as Sonai or Pooran Kusiya, while the northern river is known not only as Boglia but also as Kusiya. There is therefore no divergence between the award and the map. Consequently the boundary as delineated on the map should be followed as the correct boundary.

On behalf of Pakistan three Government Notifications, and a number of documents executed by persons residing on the banks of the two rivers, have been filed. Several decrees of Civil Courts have also been filed. These documents prove that the northern river was called Boglia and the southern river Kusiya. The documents referred to range from 1871 down to 1947. A number of maps dating from 1772 down to 1922 have also been filed by Pakistan. On behalf of India also several Government Notifications, and several maps, old and recent, have been filed in support of its case that the northern river is known as Boglia or Kusiya, and the southern river as Pooran Kusiya or Sonai.

As contended on behalf of Pakistan it appears to me that with regard to the determination of the names of the rivers in question the statements made by persons living on their banks in deeds of transfer for a great number of years are of considerable importance. On behalf of India no such documents have been filed showing that the northern river was called Kusiya. In the notification of 1938 relating to Karimganj and other thanas (Document No. 354) the southern river which is named in Sir Cyril's map as Sonai has been described as the river Kusiya. In the notification of 1922 (Document No. 350) in which the boundaries of all police stations in the district of Sylhet are revised the northern river to the east of thana Karimganj is mentioned as Boglia. Similarly, in the same notification relating to the police station of Badarpur the northern river is again named Boglia. In a notification of 1928 filed by Pakistan (Document No. 260) in describing the boundaries of a piece of land notified for acquisition in the village Dasgram the southern river is described as Kusiya (Longai).

The northern river is not named as Kusiya in all the notifications though in most of those relied on by India it is mentioned as Boglia or Kusiya or Barak. But having regard to the importance which I think should be attached to the statements of the persons living in the locality and the ancient maps of high authority, it appears to me that the preponderance of evidence is in favour of the southern river being Kusiya and the northern river being Boglia, though it cannot be denied that the northern river has also been described as Kusiya in a number of maps, notifications and Gazetteers. I therefore think that the naming of the southern river as Sonai in the map was clearly a mistake, and that it should have been described as Kusiya. It also appears that Sir Cyril was under the wrong impression that the river which he was delineating on the map was flowing towards Cachar, while in fact it flows from Cachar westwards. This is clear from the fact that though the map before him described the northern river as river Boglia at its off-take he seems to have ignored that important fact and mistaken the river to be Kusiya, because he found the words "River Kusiya" written on the extreme west of the northern river and he wrongly presumed it to be flowing towards the east up to the point Birasri and also further east of that point. In these circumstances, there is considerable force in the contention of the learned Advocate-General of East Bengal that the delineation of the boundary was made on the map under a serious mistake of fact. It does not appear that there was before Sir Cyril an issue as to Kusiya, and evidently he was under the impression that there was only one river named Kusiya and was therefore misled by the map. Had the southern river been correctly described as Kusiya and not wrongly as Sonai on the map the delineation would presumably have been along that river as the land boundary meets that river first and it also provides a continuous boundary line eastwards up to Cachar, forming as it does one continuous river line from Barak through the eastern portion of the northern river and the Noti Khal up to the land boundary. The southern river had a preferential claim to be made the boundary as the land boundary meets it first and it has been known as Kusiya since 1772. However, if a strictly technical view is taken, the southern river may not be said to reach the borders of Cachar and this would result in a partial non-determination of the boundary. To avoid this, the contention of the learned Advocate-General of East Bengal that the boundary line should run along the southern river up to the point where it draws its waters from the northern river through Noti Khal and thence along that river deserves to be accepted on the broad principles of justice and equity. After all the head-waters of the southern river cannot be dissociated from the river itself.

I am therefore of the opinion that the boundary in this area should run along the southern river *i.e.*, the river wrongly described as Sonai in the Award map, from the point where the land boundary running from the south to the north meets the said river, to the point from where that river takes its waters through Noti Khal from the northern river *i.e.*, the river named on the said map as Boglia, and thence along the latter river to the boundary between the districts of Sylhet and Cachar.

M. SHAHABUDDIN.

*APPENDIX XII**The opinion of the Chairman on Dispute No. IV*

The case submitted in this dispute on behalf of the Government of Pakistan is that the black line on the map marked "A" attached to the award, going from Gobindapur to Karimganj town, just passing under a figure 32 on the map "A" shall form the boundary line between East Bengal and Assam. As to the boundary line delineated on the map from Karimganj to the boundary between the districts of Sylhet and Cachar the Government of Pakistan concede that this part of the boundary line is following a river which for equitable reasons may be deemed to be the river Kusiya.

The case submitted by the Government of India is that the red line delineated in the map "A" attached to the award as going from Gobindapur over Birasri to Karimganj town and continuing to the boundary between the districts of Sylhet and Cachar shall be the boundary line between East Bengal and Assam.

The base of the contention of the Government of Pakistan is that the course of the river Kusiya is running as shown by the black line afore-mentioned on the map "A" until the little stream Noti Khal which is joining the river Kusiya with the river which further on meets the boundary between the districts of Sylhet and Cachar and which river for equitable reasons may be deemed to be the river Kusiya.

The base of the claim of the Government of India is that the course of the River Kusiya is running along the red line aforementioned, delineated on the map "A".

There is in fact a certain confusion as regards the name of the river which according to the description and the map shall be taken as the boundary between India and Pakistan from the point where the boundary between the thanas of Karimganj and Beani Bazar meets this river until the point where the river meets the boundary between the districts of Sylhet and Cachar.

The river which the boundary delineated on the map "A" is following, has, according to evidence produced, been called from time to time Kusiya or Boglia or Barak, and the last stretch of the river which according to the Government of Pakistan ought to be taken as the boundary for arriving at a just and reasonable implementation of the dominant intention of Sir Cyril Radcliffe is on the map itself called the Boglia river. On the other side the name of Kusiya has been used also for the river relied upon by the Government of Pakistan which river through a stream called Noti Khal is connected with the river which on the map "A" is marked Boglia.

It seems to me that under such circumstances the name of the river used in the description does not give in itself a sufficient guidance. The fact, that Sir Cyril Radcliffe has in delineating the boundary followed the first-mentioned river, must then be taken as a sufficient proof that this river is the river referred to in the description.

My conclusion is therefore that from the point where the boundary between the thanas of Karimganj and Beani Bazar meets the river described as the Sonai river on the map "A" attached to the award (Gobindapur) up to the point marked "B" on the map (Birasri) the red line indicated on the map is the boundary between India and Pakistan.

From the point "B" on the map the boundary between India and Pakistan shall turn to the east and follow the river which according to the map runs to that point from the point on the boundary line between the districts of Sylhet and Cachar which has been marked "C" on the map.

Algot BAGGE.