

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 Kulsiyara River. 2/

(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.

(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.

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 Governments 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 sittings 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 Kusiya, 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 Honourable 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 11th November 1940, 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 11th November 1940, 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 Mathabhanga 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-easternmost 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-easternmost 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 Mr. Justice Shahabuddin 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 Kusiara 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 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.

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

Algot Bagge

N. Chandrasekhara Aiyar

M. Shahabuddin.

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 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.

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

Algot Bagge

N. Chandrasekhara Aiyar

M. Shahabuddin.