THE INDO-PAKISTAN WESTERN BOUNDARY CASE TRIBUNAL

(Constituted pursuant to the Agreement of 30 June 1965)

AWARD

19 February 1968

CASE CONCERNING THE INDO-PAKISTAN WESTERN BOUNDARY (RANN OF KUTCH)

PARTIES: India and Pakistan

COMPROMIS: 30 June 1965

ARBITRATORS: Gunnar Lagergen; Nasrollah Entezam; Aleš Bebler

AWARD: 19 February 1968

States as international persons – State territory – Parts of State territory – The concept of sovereignty, independence and the nature of territorial rights – The question of application of international law between suzerain and vassal States – Proof of established historical boundary lines – Application of custom and usage – The concept of a boundary belt – Evidentiary weight accorded to maps and to acts displaying sovereign functions – Estoppel – Recognition and acquiescence by territorial sovereign or suzerain State – Effects on successor State – Relinquishment of potential sovereign rights – Acts in uninhabited remote region – Relevance of acts of private individuals – Consideration of equity – Relevance of the concept of contiguity in land boundaries – Flexibility in the conduct of arbitral proceedings – New approach to the question of discovery and inspection of evidentiary documents.

Les Etats en tant que personnes internationales – Territoires des Etats – Parties du territoire des Etats – Notions de souveraineté et d'indépendance et nature des droits territoriaux – Question de l'application du droit international entre Etats suzerains et Etats vassaux – Preuve de l'établissement de frontières historiques – Application de la coutume et de l'usage – Nations de ceinture de frontières – Valeur probante reconnue aux cartes et aux actes relevant de fonctions de souveraineté – Forclusion – Reconnaissance et acquiescement de la part de l'Etat exerçant la souveraineté territoriale ou Etat suzerain – Effets sur l'Etat successeur – Abandon de droits souverains potentiels – Actes effectués dans une région lointaine inhabitée – Pertinence d'actes de particuliers – Considération de principes d'équité – Pertinence de la notion de contiguité en matière de frontières terrestres – Souplesse du déroulement des procédures arbitrales – Nouveau mode d'approche à l'égard de la question de la découverte et de l'examen de documents servant de preuve.

INTRODUCTORY NOTE

A consolidated draft of the Introduction and the nine Chapters of this Award was distributed to the Parties on 20 October 1967. Later, in the autumn of 1967, each of the Parties submitted written comments on this draft to the Tribunal and to each other. Each of the Parties thereafter in like manner submitted counter-comments on the observations made by the opposite Party. The final text of said parts of this Award has been determined by the Tribunal. In this redrafting process, the Tribunal has taken into consideration all the proposals for amendments, additions and exclusions thus made in writing by the Parties. The Tribunal has applied the principle of incorporating to the greatest extent possible the suggestions made by each Party.

The circumstances now referred to, and the paramount interest in speedily obtaining an exhaustive, accurate and fair account of all facts and arguments, have unavoidably resulted in a certain amount of repetition and overlapping in the various Chapters and Sections.

AWARD

In the case concerning the Gujarat (India)–West Pakistan boundary

between

the Republic of India,

represented by

Mr. B. N. Lokur, Special Secretary to the Government of India in the Ministry of Law, and Member of the Law Commission of India,

as Agent,

and by

Dr. K. Krishna Rao, Joint Secretary and Legal Adviser, Ministry of External Affairs, Government of India,

as Deputy Agent,

assisted by

Mr. C. K. Daphtary, Attorney-General of India,

as Leading Council,

and by

Mr. N. C. Chatterjee, Member of Parliament, and Senior Advocate, Supreme Court of India,

Mr. J. M. Thakore, Advocate General of Gujarat, and

Mr. N. A. Palkhivala, Senior Advocate, Supreme Court of India,

as Counsel,

and by

Colonel S. K. S. Mudaliar, Retired Director, Survey of India,

Mr. R. N. Duggal, Deputy Director, Historical Division, Ministry of External Affairs, Government of India,

Colonel P. Rout, Director, Survey of India,

Mr. P. K. Kartha, Assistant Legal Adviser, Legal and Treaties Division, Ministry of External Affairs, Government of India,

Mr. K. V. Bhatt, Deputy Secretary, Government of Gujarat,

Mr. K. H. Patel, Senior Research Officer, Historical Division, Ministry of External Affairs, Government of India, and

Lieut.-Col. T. S. Bedi, Superintendent of Surveys, Survey of India,

as Experts,

and by

Mr. A. Sankararaman, Private Secretary to Special Secretary to the Government of India in the Ministry of Law, and Member of the Law Commission of India, and

Mr. B. M. Wanchoo, Personal Assistant to Special Secretary to the Government of India in the Ministry of Law, and Member of the Law Commission of India,

as Aides,

and

the Islamic Republic of Pakistan,

represented by

Mr. I. U. Khan, Chairman, West Pakistan Public Service Commission,

as Agent,

and by

Mr. Shahid M. Amin, Director, Ministry of Foreign Affairs,

as Deputy Agent,

assisted by

Mr. Manzur Qadir, Senior Advocate, Supreme Court of Pakistan,

as Leading Counsel,

and by

Mr. Asrarul Hossain, Advocate General of East Pakistan, Senior Advocate, Supreme Court of Pakistan,

Mr. Saeed Akhtar, Advocate, Supreme Court of Pakistan,

Mr. Aziz A. Munshi, Advocate, Supreme Court of Pakistan, and

Mr. Farooq A. Hassan, Advocate, High Court of Judicature, West Pakistan,

as Counsel,

and by

Mr. Enver Adil, Commissioner, Family Planning Council, Government of Pakistan,

Mr. A. Ahad, Officer on Special Duty, Ministry of Law and Parliamentary Affairs, former Surveyor General of Pakistan,

Mr. A. M. Y. Channah, Officer on Special Duty, Ministry of Foreign Affairs, formerly in the Provincial Civil Service of Sind, and

Mr. M. Rafique, Deputy Director, Geodesy, Survey of Pakistan,

as Experts,

and by

Mr. Faiz Muhammad, Special Assistant to the Agent of Pakistan, and

Mr. Bashir Ahmad, Boundary Tahsildar, Board of Revenue,

as Aides.

THE TRIBUNAL, composed of

Gunnar Lagergren, Chairman,
Nasrollah Entezam, Member,
Aleš Bebler, Member,

delivers the following Award:

CHAPTER I: INTRODUCTION

The Indian Independence Act of 18 July 1947, enacted by the British Parliament, set up, with effect from 15 August 1947, two independent Dominions, known as India and Pakistan. The suzerainty of the British Crown over the Indian or Native States (or Estates) of Kutch, Santalpur, Tharad, Suigam, Wav, and Jodhpur lapsed and they eventually acceded to and merged with India.

The territory allotted to Pakistan included the Province of Sind. It had formed part of British India which was under the sovereignty of the British Government.

In the course of time, the two Dominions became the Republic of India and the Islamic Republic of Pakistan.

The mainlands of Sind and of the above-mentioned Indian States all abut upon the Great Rann of Kutch; Sind in the north and west and the States to the south and east.

From July 1948 and onwards, Diplomatic Notes were exchanged between the Governments of India and Pakistan concerning the boundary between the two countries in the Gujarat–West Pakistan region. The dispute led in early 1965 to a tension which ultimately resulted in the outbreak of hostilities in April 1965.

1. *Constitution of the Tribunal. Proceedings*

On 30 June 1965, the Government of India and the Government of Pakistan concluded an Agreement, reading as follows:

> WHEREAS both the Governments of India and Pakistan have agreed to a cease-fire and to restoration of the *status quo* as at 1 January 1965, in the area of the Gujarat–West Pakistan border, in the confidence that this will also contribute to a reduction of the present tension along the entire Indo-Pakistan border;
>
> WHEREAS it is necessary that after the *status quo* has been established in the aforesaid Gujarat–West Pakistan border area, arrangements should be made for determination and demarcation of the border in that area;
>
> NOW, THEREFORE, the two Governments agree that the following action shall be taken in regard to the said area:
>
> *Article 1:*
>
> There shall be an immediate cease-fire with effect from 0300 hours GMT, on 1 July 1965.
>
> *Article 2:*
>
> On the cease-fire:
>
> (i) All troops on both sides will immediately begin to withdraw;
>
> (ii) This process will be completed within seven days;
>
> (iii) Indian police may then reoccupy the post at Chhad Bet in strength no greater than that employed at the post on 31 December 1964;

(iv) Indian and Pakistan police may patrol on the tracks on which they were patrolling prior to 1 January 1965, provided that their patrolling will not exceed in intensity that which they were doing prior to 1 January 1965 and during the monsoon period will not exceed in intensity that done during the monsoon period of 1964;

(v) If patrols of Indian and Pakistan police should come into contact they will not interfere with each other, and in particular will act in accordance with West Pakistan–India border ground-rules agreed to in January 1960;

(vi) Officials of the two Governments will meet immediately after the cease-fire and from time to time thereafter as may prove desirable in order to consider whether any problems arise in the implementation of the provisions of paragraphs (iii) to (v) above and to agree on the settlement of any such problems.

Article 3:

(i) In view of the fact that:

(*a*) India claims that there is no territorial dispute as there is a well-established boundary running roughly along the northern edge of the Rann of Kutch as shown in the pre-partition maps, which needs to be demarcated on the ground.

(*b*) Pakistan claims that the border between India and Pakistan in the Rann of Kutch runs roughly along the 24th parallel as is clear from several pre-partition and post-partition documents and therefore the dispute involves some 3,500 square miles of territory.

(*c*) At discussions in January 1960, it was agreed by Ministers of the two Governments that they would each collect further data regarding the Kutch–Sind boundary and that further discussions would be held later with a view to arriving at a settlement of this dispute; as soon as officials have finished the task referred to in article 2(vi), which in any case will not be later than one month after the cease-fire, Ministers of the two Governments will meet in order to agree on the determination of the border in the light of their respective claims, and the arrangements for its demarcation. At this meeting and at any proceedings before the Tribunal referred to in article 3(ii) and (iv) below, each Government will be free to present and develop their case in full;

(ii) In the event of no agreement between the Ministers of the two Governments on the determination of the border being reached within two months of the cease-fire, the two Governments shall, as contemplated in the Joint Communiqué of 24 October 1959, have recourse to the Tribunal referred to in (iii) below for determination of the border in the light of their respective claims and evidence produced before it and the decision of the Tribunal shall be final and binding on both the parties;

(iii) For this purpose there shall be constituted, within four months of the cease-fire, a Tribunal consisting of three persons, none of whom would be a national of either India or Pakistan. One member shall be nominated by each Government and the third member, who will be the Chairman, shall be jointly selected by the two Governments. In the event of the two Governments failing to agree on the selection of the Chairman within three months of the cease-fire, they shall request the Secretary-General of the United Nations to nominate the Chairman;

(iv) The decision of the Tribunal referred to in (iii) above shall be binding on both Governments, and shall not be questioned on any ground whatsoever. Both Governments undertake to implement the findings of the Tribunal in full as quickly as possible and shall refer to the Tribunal for decision any difficulties which may arise between them in the implementation of these findings. For that purpose the Tribunal shall remain in being until its findings have been implemented in full.

The cease-fire came into effect as provided in Article 1 of the Agreement.

The Ministerial Conference provided for in sub-paragraph (i) of Article 3 of the Agreement did not take place. The High Contracting Parties decided to have recourse to the Tribunal referred to in sub-paragraph (iii) of that Article.

The Government of India nominated as Member of the Tribunal Ambassador Aleš Bebler, Judge of the Constitutional Court of Yugoslavia, and the Government of Pakistan Ambassador Nasrollah Entezam, Iran, former President of the General Assembly of the United Nations. As the two Governments failed to agree on the selection of the Chairman of the Tribunal they did, pursuant to subparagraph (iii) of Article 3 of the Agreement, request the Secretary-General of the United Nations to nominate him. On 15 December 1965 the Secretary-General of the United Nations nominated as Chairman Judge Gunnar Lagergren, now President of the Court of Appeal for Western Sweden.

Dr. J. Gillis Wetter was appointed as Secretary-General and Treasurer of the Tribunal, and Mr. Jan De Geer as Deputy Secretary-General.

The First Meeting of the Tribunal was held on 15 February 1966 in the Alabama Hall in the Hôtel de Ville at Geneva.

In the course of the subsequent four Meetings of the Tribunal held in February 1966 at the Palais des Nations, Geneva, it was decided that the name of the Tribunal should be "The Indo-Pakistan Western Boundary Case Tribunal (Constituted pursuant to the Agreement of 30 June 1965)", and procedural rules were adopted, including the following:

Quorum: The number of Members constituting a quorum for the conduct of the proceedings shall be three.

Vacancies: Should a vacancy occur among the Members of the Tribunal, it shall be filled by the method laid down for the original appointment.

The language of the proceedings will be English.

Minutes of the proceedings of the Tribunal shall be prepared by the Secretary-General and shall be signed by the Chairman and the Secretary-General.

Evidence: The Tribunal will be the judge of the relevance and the weight of the evidence presented to it. If the Tribunal, whether on the request of a Party or otherwise, considers it necessary to inspect the original of any document, which is in the possession or under the control of a Government other than the Parties, or of any person other than a citizen of India or Pakistan residing in India or Pakistan, respectively, the Tribunal may request such Government or person to make the same available to the Tribunal. The Tribunal will direct how and by whom the costs in this connection are to be borne.

Cross-examination of Deponent of Affidavit: If a Party submits an affidavit to the Tribunal in support of its case, the other Party shall, on request, be given an opportunity to cross-examine the deponent.

Discovery and Inspection: A Party may, by notice in writing, call upon the other Party to make available to it for inspection any document which is or is likely to be in the possession or under the control of such other Party; and thereupon such other Party shall, if the document is in its possession or under its control, provide adequate and expeditious facilities to the Party to take inspection and copies of the document and, on request of such Party and at its cost shall furnish to it such number of photostat copies as it required and also produce the document before the Tribunal. If the document is not in the possession or under the control of the other Party, an affidavit shall be filed to that effect before the Tribunal.

Supplementary Rules of Procedure: The Tribunal may lay down supplementary rules of procedure after consultation with the Parties.

Costs: Each Party will pay its own costs. The remuneration and expenses of the Members and of the Secretary-General of the Tribunal, and the costs of the Tribunal, will be shared equally between the Parties.

Written Proceedings: The presentation of Memorials will be simultaneous (it being understood that in this case neither of the Parties is to be considered as either claimant or defendant). Each Party will file a Memorial and a Counter-Memorial, and may also submit a Final Memorial. All Memorials will be printed. The Memorials shall be submitted on 1 June 1966, the Counter-Memorials on 1 August 1966, and the Final Memorials (if any) on 1 September 1966. No extension of these time-limits will be granted. The Memorials should be comprehensive and must be accompanied by all documents relied on. All documentary evidence shall be submitted in the form of photostat copies. However, it will be sufficient for the Parties to submit accurate copies of maps (which need not, therefore, necessarily be photostats), and photostat copies will not be needed of any printed and published books.

Oral Hearings: The oral hearings will take place at Geneva, reserving the right for the Tribunal to meet in London or at any other place, should this be deemed necessary in order to inspect the original of any document which could not conveniently be made available in Geneva. If the Tribunal should decide to meet at a place in either India or Pakistan, it will at each such time for reasons of policy and courtesy visit both Nations. The oral hearings will begin in the Palais des Nations on 15 September 1966. The hearings will take place five days a week. The hearings will consist of an opening statement, an answer, a reply and a rejoinder. (It was decided by the drawing of lots that India would make the opening statement. The Parties would thereafter address the Tribunal alternately.) The Meetings will be held in private. If a Member of the Tribunal should put questions to Agents and Counsel or ask for explanations, Agents and Counsel will always be informed that immediate answers are not required.

Award: The Award shall be signed by all three Members of the Tribunal and will be rendered at a Session which both Parties will be invited to attend.

Memorials, Counter-Memorials and Final Memorials were submitted on the stipulated dates.

In the course of June and July 1966, a delegation from Pakistan visited New Delhi for the purpose of inspecting and obtaining copies of maps and documents in Government archives, and a delegation from India visited Islamabad for the same purpose. Thereafter, during the preparation of the Counter-Memorials and Final Memorials, and throughout the proceedings before the Tribunal, both Parties through direct communications continuously requested the production of maps and other documentary evidence from each other and assisted one another in searching for and producing such evidence.

The oral hearings began on 15 September 1966. They continued with a few interruptions until 14 July 1967. The oral hearings were held at the Palais des Nations in Geneva. In the course thereof, documents, maps and photographs not exhibited with the Memorials were submitted to the Tribunal.

At the Meeting held on 19 October 1966, the Tribunal and the Delegations of the Parties attended the showing of a film of some portions of the Rann of Kutch area produced by Pakistan.

On 13 July 1967 the Parties reached an Agreement on the procedure for the demarcation of the boundary to be determined by the Tribunal. This Agreement is attached as Annex I to this Award.

The Minutes of the Proceedings of the Tribunal, containing, *i.a.*, decisions of the Tribunal on procedural matters, and important statements and submissions of the Parties, were all shown to the Parties for comments, before being signed. In addition to these Minutes, Verbatim Records of the proceedings were made. They cover over 10,000 pages. The number of maps exhibited in the case is about 350.

The Tribunal wishes to pay tribute to the spirit of co-operation and courtesy prevailing between the Parties. They have, in unique measure, assisted the Tribunal and one another in the production and search for the unusually rich and complex documentary evidence.

2. *The Question of* ex aequo et bono

During the Meetings of the Tribunal in February 1966, the question arose whether the Tribunal was invested with power to adjudicate *ex aequo et bono.* On this issue, after hearing the Parties, the Tribunal, on 23 February 1966, rendered the following decision:

> The question submitted to the Tribunal is whether or not the Agreement of 30 June 1965 confers upon it the power to decide the case *ex aequo et bono.*
>
> India moves that this Agreement does not authorise the Tribunal to decide the present case *ex aequo et bono,* while Pakistan submits that the said Agreement gives the Tribunal such power.
>
> India requests the Tribunal to decide this issue during the present Session. Pakistan moves that the issue should not be decided until after the closure of the written proceedings.
>
> Having regard to the circumstances of the case, the Tribunal deems it appropriate to resolve the issue at this stage of the proceedings.
>
> As both Parties have pointed out, equity forms part of International Law; therefore, the Parties are free to present and develop their cases with reliance on principles of equity.
>
> An international Tribunal will have the wider power to adjudicate a case *ex aequo et bono,* and thus to go outside the bounds of law, only if such power has been conferred on it by mutual agreement between the Parties.
>
> The Tribunal cannot find that the agreement of 30 June 1965 does authorise it clearly and beyond doubt to adjudicate *ex aequo et bono.*
>
> Therefore, and as the Parties have not by any subsequent agreement consented to confer the power upon the Tribunal to adjudicate *ex aequo et bono,* the Tribunal resolves that it has no such power.

3. *Submissions*

The following submissions are made by the Parties. On behalf of the Government of India:

> That the Tribunal determine the alignment of the entire boundary between West Pakistan and Gujarat – from the point at which the blue dotted line meets the purple line in Indian Map B-44 in the west to the North-Eastern Tri-junction in the east – as it appears in the Indian Maps B-44, B-37, B-19 and B-20 where the correct alignment is shown by appropriate boundary symbols.

On behalf of the Government of Pakistan:

> That the Tribunal determine that the border between India and Pakistan is that which is marked with a green-yellow, thick broken line in the Pakistan Claim Map.

The annexed[1] Map A is a mosaic of the Indian Maps B-44, B-37, B-19 and B-20, and the Pakistan Claim Map is annexed as Map B. In Map A, one of the component maps does not have a colour riband to show the boundary, while another has only a purple riband and the remaining two have a purple riband and

[1] Maps not annexed, as explained in the Foreword.

a yellow riband therein. The alignment of the boundary claimed by India, however, is represented by the symbol -·-·- in all the component maps.

It is common ground that the Gujarat–West Pakistan boundary stretches from the mouth of the Sir Creek in the west to a point on the Jodhpur boundary in the east. The Parties agree that the Western Terminus of the boundary to be determined by the Tribunal is the point at which the blue dotted line meets the purple line as depicted in Indian Map B-44 and the Pakistan Resolution Map, and that the Eastern Terminus of the same boundary is a point situated 825.8 metres below pillar 920 on the Jodhpur boundary as depicted in Pakistan Map 137.

This agreement leaves out of the matters submitted to the Tribunal the portion of the boundary along the blue dotted line, as depicted in Indian Map B-44 and the Pakistan Resolution Map, as well as the boundary in the Sir Creek. The blue dotted line is agreed by both Parties to form the boundary between India and Pakistan. In view of the aforesaid agreement, the question concerning the Sir Creek part of the boundary is left out of consideration.

From the Western Terminus, the boundary claimed by India takes off to the north and that claimed by Pakistan to the south; and from the Eastern Terminus, the boundary claimed by India takes off to the south-west while the boundary claimed by Pakistan turns south-east.

Both Parties agree that before Independence the boundaries between the Province of Sind, on the one hand, and one or more of the Indian States which lay on the opposite side of the Great Rann, on the other hand, were conterminous. Therefore, in the disputed region, apart from India and Pakistan, there is no other State that does or could have sovereignty. There is between India and Pakistan a conterminous boundary today, whether or not there was at all times a conterminous boundary between Sind and the Indian States.

Pakistan contends that, should the Tribunal find that the Province of Sind and the Indian States were not fully conterminous, then the area between Sind and these States would be an "undefined area", falling outside the scope of the Indian Independence Act, 1947. In such an event, the conterminous boundary between India and Pakistan would have to be determined by the Tribunal on the basis of rules and principles applicable in such circumstances.

Pakistan adds that the evidence produced by it in this case is in support of its principal submission, although some of it could also be used in support of its alternative submission.

Both Parties agree that the Rann was not a "tribal area" as defined in Section 311 of the Government of India Act, 1935.

Each Party states that the boundary claimed by it is the traditional, well-established and well-recognised boundary.

For the purposes of this case, India states that the Rann means the Rann lying to the east of the vertical line and to the south of the horizontal line as depicted in Map A. Pakistan has another concept of the topographical extent of the Rann. Pakistan maintains that the Rann lay to the east of what was once the Khori River and considers that the area in dark pink to the west of that river and to the east of the vertical line in Map B was not part of the Rann, but was

part of the land area of Sind; this area is referred to by Pakistan as "the delta lands in dispute". Similarly, according to Pakistan, the area in light pink in Map B lying below the boundary claimed by India, and including Dhara Banni, Chhad Bet, Pirol Valo Kun, Kanjarkot, Vighokot and Sarfbela, is not the Rann but part of the land area of Sind; this area is referred to by Pakistan as "the upper lands in dispute", the north-western part of which is sometimes referred to as the "jutting triangle". Pakistan contends that the Khori River, which has disappeared, once separated the upper lands in dispute from the delta lands in dispute and the latter lands from the Sayra lands which once lay along the eastern bank of that river.

On the basis that the delta lands in dispute and the upper lands in dispute once formed and partly now form the land area of Sind, Pakistan claims this area as a part of Sind and hence of Pakistan.

Accordingly, Pakistan contends that for the purpose of these proceedings, the Rann should be regarded as the area shown in blue in Map B.

Pakistan contends that the boundary runs roughly along the 24th parallel, north latitude, as shown in Map B. This line passes through certain fixed points that have traditionally been regarded as marking the boundary; otherwise it is a smooth line as nearly as possible in the middle of the Great Rann. Apart from these fixed points, the exact alignment of the boundary has never been settled.

Pakistan produced two tracings prepared for this case, Pakistan Maps 126 and 127, for the purpose of showing the median line, the former on the assumption that Bela, Pachham, Dhara Banni, Sarfbela and Bawarla Bet are part of the mainland, and the latter on the assumption that they are islands. According to the submission of Pakistan, the former is the correct assumption.

Pakistan submits:

(*a*) that during and also before the British period, Sind extended to the south into the Great Rann up to its middle and at all relevant times exercised effective and exclusive control over the northern half of the Great Rann;

(*b*) that the Rann is a "marine feature" (used for want of a standard term to cover the different aspects of the Rann). It is a separating entity lying between the States abutting upon it. It is governed by the principles of the median line and of equitable distribution, the bets in the Rann being governed by the principle of the "nearness of shores";

(*c*) that the whole width of the Rann (without being a condominium) formed a broad belt of boundary between territories on opposite sides; that the question of reducing this wide boundary to a widthless line, though raised, has never been decided; that such widthless line would run through the middle of the Rann and that the Tribunal should determine the said line.

Pakistan adds: Map B represents the situation immediately after the earthquake of 16 June 1819. Before that date there existed an extension of the Kutch mainland to the north, along the eastern bank of the Khori River. This extension is referred to as the district of Sayra. If the Tribunal were to accept the vertical line to the north of the Western Terminus as the boundary between India and Pakistan, this would imply a notional extension along that line of the former Sayra lands. The boundary would then continue to the south from the top of

the said vertical line till it reached the 24th degree of north latitude, and from there roughly along the said latitude to the east, leaving a small strip to India, however narrow, along the vertical line.

India contends that the boundary runs roughly along the northern edge of the Rann as shown in the pre-partition maps. This is the traditional, well-established and well-recognised boundary between Sind, on the one hand, and Kutch and the Indian States of Jodhpur, Wav and Suigam, on the other hand, which, in the course of time, became crystallised and consolidated. This boundary was acknowledged, recognised, admitted and acquiesced in by the Paramount Power. The Paramount Power explicitly settled a part of the Sind–Kutch boundary by a Resolution of the Government of Bombay in 1914. The same Resolution implicitly confirmed the rest of the boundary. The Index Map (Ind. Map B-45) used by the Government of India, the Government of Bombay and the Sind authorities for the preparation of the definition of the boundaries of Sind, and the definition of the boundaries of Sind as proposed by the Government of India and slightly modified by the Government of Bombay in consultation with the Sind authorities, have the force of an official description of the territory of Sind and are binding on Pakistan; they show that at the time of the creation of Sind as a Governor's Province, the Rann was not included in the territory of Sind and the southern boundary of Sind lay along the northern edge of the Rann as conceived by India. The alignment of this boundary is shown in Map A, which is composed of the most accurate of available pre-partition maps.

Both Parties agree that, should the Tribunal find that the evidence establishes that the disputed boundary between India and Pakistan lies along a line different from the claim lines of either Party, the Tribunal is free to declare such a line to be the boundary.

Pakistan further states that the intention of the Parties is to end this dispute finally, and it was for that purpose that the Agreement of 30 June 1965 was entered into.

The Joint Communiqué of 24 October 1959, referred to in subparagraph (ii) of Article 3 of the Agreement of 30 June 1965 stipulates:

> "It was agreed that all outstanding boundary disputes . . . should be referred to an impartial tribunal . . . for settlement and implementation of that settlement by demarcation on the ground and by exchange of territorial jurisdiction, if any."

Pakistan comments that the emphasis on finality and settlement forms the keynote of the Communiqué and the Agreement and, therefore, the Tribunal is under an obligation to find a boundary. Frustration of the reference is not contemplated.

4. *Pillars on the Claimed Boundary Lines*

The Tribunal is informed that a boundary pillar exists at the Western Terminus, but that no such pillar has as yet been erected at the Eastern Terminus.

Along the accepted horizontal line to the west of the Western Terminus, and along the vertical line as claimed by India to the north thereof, 134 pillars were erected in 1924. Pillars also seem once to have been fixed eastwards from the top of the vertical line along the two loops in Badin Taluka.

As to the boundary claimed by Pakistan, Pakistan takes up the position that in 1924 seven pillars were erected on the vertical boundary south of the Western Terminus. India denies that such pillars were ever erected, and Pakistan has accepted the Indian statement that the seven pillars do not in fact now exist. Pakistan further maintains that to the south-east of the Eastern Terminus, two or more pillars were erected in 1850 on the claimed boundary, the southernmost of them near the edge of the Rann being referred to as Becher's pillar. India, on the other hand, maintains that if there are such pillars along the boundary of Jodhpur they do not necessarily represent the Sind boundary.

5. *The Main Arguments and Evidence of the Parties*

India argues that the possessions of the Rao of Kutch in the first half of the eighteenth century extended to the territories beyond the Great Rann and that this necessarily implies that the Great Rann was within his territory. Even though he lost these possessions beyond the Rann, he did not lose his sovereignty over the Rann. India quotes a Diplomatic Note of Pakistan of 1960 in which it is stated that before 1762 the whole of the Rann of Kutch up to its northern extremity and even beyond fell within the jurisdiction of the Kutch State. The crossings of the Rann or invasions of Kutch by the Sind Rulers are no evidence of their control over the Rann as they were by way of military forays without the intention or the result of establishing sovereignty over the Rann. India contends that there is no evidence to establish that at any time after 1762 the Rao of Kutch was deprived of his sovereignty over the Rann of Kutch; on the other hand, there is a body of evidence showing that the Rao of Kutch continued to enjoy sovereignty over the Rann and such sovereignty was recognised by the British Government. India says that the various acts of display of State authority cited by it confirm that the sovereignty of Kutch extended over the whole Rann.

India says that Kutch asserted in Annual Administration Reports for over 75 years that the entire Rann belonged to Kutch and these assertions were acquiesced in by the Government of Bombay, the Government of India and the Secretary of State who did not contradict the assertions. India further points out that the British Government positively recognised, through Statistical Abstracts relating to British India, Bombay Administration Reports, Gazetteers, Memoranda on Indian States, Notes prepared on important occasions and a number of other official publications and correspondence spread over a like period, that the entire Rann belonged to Kutch. India also points out that ever since 1871 maps based on scientific surveys carried out by the Survey Department of the Government of India have consistently shown the northern edge of the Rann as the conterminous Sind–Kutch boundary; although these maps were distributed to officials from the Secretary of State down to the Collectors of districts and to other persons, no one objected to this depiction of the boundary; in fact, the Secretary of State and the Government of India scrutinised some of these maps and expressly approved them.

The cartographic evidence of India consists of a large number of maps prepared and published by the Survey of India. The "basic maps" comprise maps published on the basis of ground survey by Macdonald (1855–70), by Pullan

(1879–86), by Erskine (1904–05) and by Osmaston (1937–39). The "compiled maps" were prepared on the basis of basic maps, supplemented by extra-departmental information, and comprise the atlas sheets, the degree sheets, the 32-mile maps of India, and some other maps on different scales made for special purposes. India has also exhibited maps of the talukas of Sind prepared and published by the Sind Survey authorities.

India further attaches great importance to the Resolution of the Government of Bombay passed on 24 February 1914 with the approval of the Government of India rectifying the Kutch–Sind boundary, and the subsequent erection of boundary pillars in 1924 along the vertical line, northwards from what is now referred to as the Western Terminus. India submits that the 1914 Resolution presupposed and was based on the existence of an established boundary running roughly along the northern edge of the Rann. India also places special reliance upon the officially proposed definitions (Ind. Docs. A-35 and A-36) and depiction (Ind. Map B-45) of the boundary of Sind at the time of its creation as a Governor's Province in 1935. India contends that they all confirm the boundary as claimed by it.

Pakistan argues that from about the sixth century onwards a "current of history" had consisted of invasions by the Rulers of Sind of the Kutch mainland. Sind had established a garrison of 5,000 men at Lakhpat (1765 until about 1775). Pakistan also relies on an account given in 1827 to the effect that Sind had actually taken possession of Khadir and levied contributions on Wagur, which were admittedly parts of Kutch, until the advance of the British army in 1816 stopped these actions. Pakistan argues that the Rulers of Sind had manifested effective control and dominion over the Rann by their ability to cross it. The fortifications built by Kutch inside the Sind mainland were maintained only during a temporary interlude of 10 or 20 years.

Pakistan argues further that under the political system of the British in India, Kutch "froze" in 1819, when it entered into treaty relationship with the British, and could not have increased since that time, short of an express act by the King-in-Parliament, or at least the King-in-Council. Therefore the basic issue before this Tribunal is the extent of the sovereignty of Kutch in 1819.

Pakistan refers to statements of officials in the Sind Administration and others to the effect either that the Rann itself is the boundary, or that the boundary lies in the middle of the Rann. Statements of the Rao of Kutch in 1854 and 1866 are also relied upon by Pakistan as containing admissions by him to the same effect. Two maps (Pak. Maps 1 of 1814 and 4 of 1826) have been produced to show that the boundary between Sind and Kutch was situated in the middle of the Rann, and a number of other "pre-survey" maps are said to indicate that the Rann as a "marine feature" is either a "dividing entity" or itself a "belt of boundary", in which the surrounding States at most had established themselves as sovereigns over some bets.

Pakistan cites a Report of Investigation and two Decisions, from which it deduces that the sovereign rights of the coastal States over the bets in the Rann were divided along a line that ran equidistant from the shores on either side of the Rann (the Report of Major Miles in 1823, the Resolution of the Government

of Bombay, dated 6 March 1860, relative to Keswala Bet, and the Resolution of the Government of Bombay of 30 April 1867, agreed to by the Secretary of State for India, relative to Poong Bet). The approach was similar, says Pakistan, in the Resolution of 20 December 1897 of the Government of Bombay, disposing of proprietary rights in the Nara and Parpatana Bets. This series of instances was followed by the Report of R. M. Kennedy in 1898 concerning certain disputes between Kutch and Morvi, where he applied as a general rule for the division of the Rann (or more particularly the Little Rann): "half and half across". Upon this Report, the Secretary of State acted in his Despatch of 8 February 1900.

These instances are relied upon by Pakistan both as illustrating the principles applied during British Paramountcy, thus constituting precedents, and as demonstrating a division in fact which is not consonant with India's position that the whole Rann belonged to Kutch or other Indian States.

Pakistan maintains that the question of the boundary between Sind and the Indian States was never solved. The Commissioner in Sind raised the matter of the accurate boundary between Thar Parkar (District in Sind) and Kutch in 1875, but it was postponed on account of the death of the Rao of Kutch. The matter of the boundary in the Great Rann became an issue for the Paramount Power which through the Bombay Government in 1885 and 1905 preferred to leave this question alone, and in 1938, through the Crown Representative to the Western India States, declared that it was "in dispute" (see also the Western India States Agency file of 1934, Pak. Doc. B.325).

Pakistan has introduced much evidence to show that Sind (or British) jurisdiction extended over the disputed territory. Pakistan then also relies upon acts of private individuals, like cultivation, fishing and grazing. Special importance is attached to grazing in Chhad Bet, Dhara Banni and Pirol Valo Kun. It is submitted that this grazing was protected and supported by British authorities and that it is of vital interest for the inhabitants of the Sind coast.

Pakistan contends that in relation to the northern half of the Rann what is conclusively established is the total absence of Kutch before 1926. The question of exercise of jurisdiction by Kutch in that half did not arise before that date, when attempts for the first time were made and proved abortive. As regards the assertions made by Kutch in the Annual Administration Reports, Pakistan argues that the British Government had no obligation to contradict them. Furthermore, with a view to creating confidence in the Indian States, the British policy was not to discuss statistical statements.

In order to meet the Indian reliance on maps, Pakistan submits that many maps relied upon by India were, as far as the relevant political boundary is concerned, incorrect as being based upon misunderstanding or confusion, and that they were never invoked on the several occasions when the boundary between Sind and the Indian States on the opposite side of the Rann was discussed.

India answers that it was not the policy of the British Government either to say something which was not true or to refrain from correcting a wrong assertion.

India also says that Kennedy misinterpreted some earlier decisions in considering that there was a general rule for dividing the Rann into two equal halves.

The series of instances relied upon by Pakistan in this respect are not based on any principle of equidistance but were entirely passed on facts or as a matter of convenience.

Finally, India argues that a large number of instances relied upon by Pakistan did not amount to acts of exercise of jurisdiction or did not relate to the area in dispute. According to India, in any event, there is no continuous and effective display of authority by Sind over the disputed area and whatever acts were committed by the subordinate officials of Sind, contrary to the attitude of the Government of India and the Government of Bombay, would have no effect. India denies that the grazing was protected and supported by the State authorities; India points out that Sind cattle have not been grazing in Dhara Banni and Chhad Bet since 1956 and argues that grazing in these bets is not of vital interest for the inhabitants of Sind.

The Parties agree that the Tribunal is not bound to appraise the evidence presented to it in accordance with the submissions or propositions made by them concerning its purport and effect.

With regard to evidence referred to as "instances of exercise of jurisdiction", which in this case includes acts performed by private individuals, Pakistan states that all the instances relied upon by Pakistan which relate to the period before Independence are evidence of territorial rights as they existed in 1819. The instances of exercise of jurisdiction related to the period after Independence are, on the other hand, primarily to be regarded as an independent source of title; they represent at the same time a prolongation of the situation existing during the time of the Amirs (the Rulers of Sind before the British conquest in 1843) and the British era.

While maintaining that the Rann of Kutch does not constitute a "no man's land", Pakistan adds that, if the Tribunal nevertheless were to come to the conclusion that it was an "undefined area" or a "no man's land", then all "instances of exercise of jurisdiction" ought to be treated as independent sources of title.

India submits that little value can be attributed to the instances of exercise of jurisdiction after Independence which are relied upon by either Party since the present dispute was already latent.

It may be noted here that the latest instance of exercise of Jurisdiction referred to by Pakistan relates to 1956, and by India, to 1964.

It was agreed in respect to all the evidence produced in the case that during the British occupation of Sind (1843–1947) no intention ever existed to acquire territories for Sind to the detriment of the neighbouring Indian States.

6. *Relevant Dates*

Both Parties state that the boundary of Kutch (being the boundary which for the whole or the main portion of the distance between the two Termini was conterminous with that of Sind) has remained unchanged since the time when

Kutch became a vassal State under the British by virtue of the Treaty of 13 October 1819 between the Rulers of Kutch and the East India Company.

India adds that the events subsequent to 1819 relied upon by India evidence the boundary existing in or before 1819, or a later consolidation of this boundary. No precise moment can, however, be indicated when the boundary was so consolidated. The boundary claimed by India has been recognised by all parties concerned on several occasions after 1819. Pakistan argues that sovereign rights may have evolved in the course of time, especially in relation to the small bets in the Rann.

Both Parties agree that a relevant date for ascertaining the boundary of Sind would be 18 July 1947, the date of the passing of the Indian Independence Act.

As to the boundaries of the former Indian States, both Parties emphasise the date of their accession to India. Pakistan adds that in case the accession is defective, the date of merger would be decisive.

Pakistan, however, also relies upon the accrual of additional sources of title after Independence; viz. first, nine years (1947–56) of continuous and peaceful display of State functions, and second, a binding admission made by India to Pakistan in a communication of 1955 that the border between the two countries was near Karim Shahi.

7. Applicable Law. Equity

As has been mentioned above, the State of Kutch became a vassal State under British Paramountcy in 1819, and the same status was imposed upon the other States in the Great Rann of Kutch area, all of which after Independence acceded to and merged with India. In 1843, the British conquered Sind and established themselves as sovereign thereof.

The Parties have agreed that for the appraisal of events which occurred after 15 August 1947 (the date of Independence), International Law has to be applied in this case. Similarly, International Law was evidently applicable to the relationship between Kutch and the neighbouring Indian States, on the one side, and Sind, on the other side, up to the conquest of Sind in 1843. But there is controversy about the applicability of International Law to the relations between the Paramount Power and its vassals, such as Kutch. This question has particular importance for the period after the British conquest of Sind because from this event on Britain was, as the sovereign of Sind, the neighbour of its own vassels, Kutch and the other Indian States under its suzerainty.

According to Pakistan, the "relations between the Paramount Power and the Native States are in no way governed by International Law, and . . . any application of it by that Power to those States must proceed from the Paramount Power itself as a matter of grace and concession". (Tupper, *Indian Political Practice*, Vol. I, 1895, p. 15.) Pakistan develops this theory by pointing out that as between the Paramount Power and the vassal State, there could be no question of acquiescence, nor of any omission to object or contradict, at any rate on the side of the Suzerain Power. The rights of the Paramount Power could not lapse in favour of an Indian State by any supposed neglect, acquiescence or acknowledgement by its officials. Even when an express admission had been made, it

did not bind the Paramount Power vis-à-vis the vassal State, except when contained in a Treaty. Even Treaty engagements were actually unilateral. It was for the British to respect them. They did.

India answers: Even if the application of International Law might have been at the option of the Paramount Power, the proposition that it could at any time go back on its word imputes very serious dishonesty to Great Britain. Pakistan has not, in any event, inherited the powers of Paramountcy and cannot therefore now object to a situation which emerged in due course during the British period. Furthermore, acquiescence and recognition are not matters of International Law exclusively; they are, in the circumstances of the case, matters of evidence.

Pakistan says that decisions of the Paramount Power, with respect to boundaries, competently made in conformity with the law prevailing at the time, are binding on the Parties to this dispute.

India maintains that decisions of the Paramount Power, functioning through the Secretary of State, the Government of India or the Government of the Province concerned, with respect to boundaries were final and valid and are binding upon the Parties to this dispute. Such decisions were made in the exercise of Paramountcy; there was no custom, nor was there any legislative provision regulating such decisions, nor was there any uniformity in the mode of expression of such decisions.

As regards the authority to settle boundary disputes during the British period, Pakistan submits that the Paramount Power alone was competent to do so.

India considers that, in addition to formal decisions, there are other bases for determining boundaries, as, for example, by way of acquiescence, recognition, acknowledgement or admission on the part of the Paramount Power. Pakistan relies in this respect mainly on local conceptions and acknowledgements.

India comes close to the notion of *uti possidetis* when stating:

> "On principle the proper thing is to say that the frontier was that which at that time (15 August 1947) the father country or the mother country acknowledged to be the frontier and it is right that that frontier should continue, unless there was something very striking at the time of partition or subsequent thereto which requires positively that it should be treated otherwise." (Verbatim Records, p. 12843.)

On the other hand, Pakistan also argues that the rights of the inhabitants of the northern coast of the Rann are rights of the people of the Muslim unit that was taken over by the British as a unit from its Muslim Rulers and later returned to the Muslim State of Pakistan. Those rights are inseparably attached to the coast of that unit.

It may be added that with respect to the relations between the Paramount Power and the subordinate States of India, neither of the Parties made any distinction between the British supremacy exercised by the East India Company (until 2 September 1858) and the British Crown.

As to equity, the position of India may be summarised as follows: The Tribunal has to ascertain where the boundary has been and is and not to ascertain where a boundary ought to be. This is a question of fact and not a question of law, the hardship of which has to be mitigated by equity. If the Tribunal finds that a particular line is the boundary, then there is no question of any equity

being applied in order to vary it from where, as a matter of fact, it has been found to be. There is no question of any legal doctrine being applied, it is a question of fact, pure and simple. Principles of equity can at most be invoked in assessing evidence. Given the conduct of the British Government over a century, by way of its acts of acquiescence, recognition, acknowledgement and admission, Britain or its successor cannot as a matter of equity be allowed to deny what the British Government has maintained all along.

India, after pointing out the element of uncertainty which is implied in the application of equity, adds: If equity had been specifically referred to in the Agreement of 30 June 1965, and the Tribunal had been asked not to find on a question of fact, but to draw what in its judgment is a proper line, then the question of equity would enter into the solution of the case, and the Tribunal would be permitted to make a dent or a twist in the border line, because it thinks it fairer. It is true that the Tribunal has to determine the border "in the light of [the Parties'] respective claims and evidence produced before it" (sub-paragraph (ii) of Article 3 of the Agreement), but that does not mean that a Party by invoking equity can invest the Tribunal with jurisdiction to vary an established fact. The "claim" is to a particular boundary.

Pakistan states: The Tribunal has ruled that equity forms part of the International Law to be applied in this case. Therefore, the alignment of the boundary must be tested by principles of equity. It would, for instance, be entirely repugnant to equity and good conscience, and create an untenable position, to allow India to encroach upon Pakistan at the inlets of the Thar Parkar sector of the Rann. The many difficulties that would arise if Kutch could erect fortifications and establish customs houses at places situated many miles within the District of Thar Parkar, for instance close to Virawah, or on some of the roads crossing inlets of the Rann, were recognised already in 1885 by the Deputy Commissioner of Thar Parkar (Pak. Doc. B.9).

Pakistan stresses that the distinction sought to be drawn by India between "the boundary where it is" and "the boundary where it should be", is inapplicable to the facts of this case. Pakistan agrees that the task of the Tribunal is to find "the boundary where it is", but argues that a boundary is the limit of the sovereignty of a State, and if a map shows the alignment of the boundary elsewhere, then that map needs to be corrected to show where "the boundary should be".

CHAPTER II: THE NATURE OF THE RANN, AND THE "MEDIAN LINE" CONCEPT

1. *The Nature of the Rann*

The area of the Great Rann, as conceived by India, is about 7,000 square miles. The area of the adjoining Little Rann is about 2,000 square miles.

Pakistan maintains that in the western portion of the Great Rann there is no clear distinction between Rann and not-Rann; the Parties agree that the other contours of the Rann are rather distinct and sharp. On 11 July 1967, near the end of the oral hearings, Pakistan, however produced some tracings (Pak. Maps 148–151) said to have been prepared on a rapid survey which according to Pakistan was made in 1967 to show the alignment of the track following the northern edge of the Rann. These tracings similarly show different lines of the track following that edge, as depicted in the Sind Revenue Survey Maps and as surveyed in 1967, respectively.

One of the issues which initially attracted considerable attention concerned the nature of the Rann as a geographical feature. At the request of the Tribunal the Parties submitted written statements on this point.

The statement of India reads as follows:

"The Rann is a vast expanse of land, mainly consisting of salt waste land. Portions of the Rann are encrusted by a salt layer of varying thickness. There are in the Rann some shallow depressions with water in them all the year. Parts of the Rann rise above the general level and sustain some vegetation; they are called 'bets' or 'dhoois'.

"2. Since the earthquake of 1819, sea water is driven over some parts of the western portion of the Rann from about May. During the monsoon, rivers, in particular, Saraswati, Banas and Luni (which is brackish), bring down water so as to cover some parts of the eastern portion of the Rann with water. During the period that such parts of the eastern and western portions of the Rann are covered with water, the depth of the water varies from a few inches to a few feet. From about September, the sea water commences to recede and the discharge of the rivers also diminishes, and ultimately these parts dry up by about November and revert to their normal state.

"3. Rain water and water from some small streams of Kutch cover parts of the central portion of the Rann during the monsoon with not more than a few inches of water at any time. This portion of the Rann is free from water from about October.

"4. The bets are not covered by water at any time of the year.

"5. The Rann is passable throughout the year on foot or on animals or, except during the monsoon, in vehicles.

"6. The conditions may vary to some extent in any particular year according to the severity of the season."

The statement of Pakistan reads as follows:

"The Rann is a marine feature. It is connected in the east and the west with the Arabian Sea. Up to the 14th century, it was a navigable sea. Its condition has been changing and during the course of time it has lost some of the characteristics of a sea. For the purposes that are relevent to the point at issue in this case, the status of the Rann is that of an inland sea or an inland lake.

"2. The Rann is a great basin or depression with a perfectly plain surface without channel or furrow. It is a level plain, only very slightly above the sea level. It has sharply defined edges which are referred to as 'shores' with elevated tracts not under water, which are referred to as 'islands'. The Rann is completely barren with no vegetation.

"3. The Rann remains under salt water for more than half the year. The source of the water is largely from the sea, and only partially from rain, the rivers Luni and Banas and certain insignificant seasonal streams.

"4. The flooding of the Rann is a verifiable phenomenon. The Rann starts getting flooded two or three months before the rains begin.

"5. The flooding of the Rann varies from place to place and from season to season. All parts of the Rann are covered with water between May and October. No portion of the Rann is completely dry for more than about three months in the year. No part of the Rann is free from water for more than four months or so in the year. The water begins coming into it by the middle of March or end of March. The Dewan of Kutch has given the date as the 15th of March. This water stays till November and sometimes as late as January. The Dewan of Kutch gives the date as the 31st of December.

"6. The depth of this water varies from place to place and is measurable in feet, being as much as seven feet or even more in certain places.

"7. When under water, the appearance of the Rann is that of the sea. When dry, it has the appearance of the sea having shortly withdrawn from it. Whether wet or dry, the crossing of the Rann is attended by hazards and it is passable only at particular places and at particular times.

"8. In the submission of Pakistan, before the 16th June 1819, the western limit of the Rann was the Sayra land and the upper lands in dispute. After the earthquake, the western limit of the Rann became what it is shown as in Pak. Map 25. The Rann is geographically distinct from the delta lands and the upper lands in dispute. Topographical changes have blurred the sharp differentiations between these three entities, giving rise to erroneous conceptions about the western and north-western limits of the Rann.

"9. There are various theories as to the formation of the Rann. Those theories are not strictly relevant for the purposes of this case. The only material consideration is how those who were concerned with it for practical purposes, treated or regarded it.

"10. The Rann still retains all features of a sea that are relevant for the purposes of this case."

With the intention of limiting the scope of this controversy, the Tribunal on 29 November 1966 issued the following statement:

"The Tribunal has considered the arguments of the Parties concerning the nature and characteristics of the Rann of Kutch as presented in the Memorials and during the oral hearings and has reached the unanimous conclusion that the differences between the submissions made by them concerning three aspects of the subject will not be material to the Tribunal in determining the boundary between India and Pakistan in the disputed area, name (i) the periods of inundation in different areas of the Rann, (ii) the source of the water which periodically covers great areas of the Rann, and (iii) the depth of the water at different times and different places on the Rann."

Nevertheless, one essential point remained open. While India's view is that "the true nature of the Rann is land", Pakistan defines the issue by stating:

"The relevant point is whether this tract, taken all in all, is or is not sufficiently akin to a sea or an inland lake, dividing territories abutting on it, as to be treated like a sea or an inland lake, and whether it has or has not been so treated by those concerned with it in the past." (Pakistan Counter-Memorial, para. 101.)

Pakistan further argues that if juridicial rights have been derived from a certain view of natural facts and on that view of natural facts people have been conducting their relations, then it is not at all relevant at a subsequent stage to

enquire whether the view of the natural facts that was taken is in accordance with the scientific theories of a particular era.

The Tribunal has examined the aspect of the case most carefully in the light of the evidence submitted by the parties and notes:

1. Travellers, geographers, administrators and other authors of descriptions of the Rann as a physical feature do not differ essentially in enumerating the main characteristics of the Rann. They emphasise its similarity to a desert in the dry season and its similarity to a lake in the wet season. (Mr. Fielding wrote towards the end of the last century: "The Rann, which in the dry season is a sandy desert without a scrap of vegetation with here and there dangerous bogs and extensive tracts of salt, is, during the south-west monsoon, an immense shallow inland sea".) They stress that it is mostly covered with a layer of salt when it is dry, and that the layer of water that covers it in the wet season is shallow. They mention that the Rann can be crossed, along the determined tracks, at all seasons but with a varying amount of difficulty. They mention the existence of portions never dry and portions never covered with water.

2. Authors of descriptions differ, on the other hand, in their use of terms employed to sum up their description of the Rann. Those terms go from such emphasising its dryness, such as barren waste, sandy desert, vast salt plain, salt desert, salt waste, salt impregnated alluvial tract, to such emphasising its resemblance to an inland sea or lake when covered with water. Yet terms which attempt to express both wetness and dryness of the Rann appear to be the most frequent. They are: swamp, marsh, morass, salt marsh, salt water waste, mud and sand, marsh of alluvium.

3. The dividing line between the land surrounding the Rann and the Rann is at times called the shore coast or edge of the Rann, while the dry, grass-covered portions in the Rann, usually called bets, dhoois, chans or beers, are sometimes called islands.

4. Some authors stress the uniqueness of the Rann, thus explaining why it is called by its peculiar name, the Rann of Kutch (and only exceptionally the Desert of Kutch, and never the Lake of Kutch). The word Rann, according to Pakistan, in Hindi language means a battlefield, but there is no historical record of any battle ever having been fought on this field, which is "almost absolutely level". Sometimes the Rann is said to be a corruption of "Aranya", or waste; or it is equated with "Irina" in Sanskrit, meaning a salt ground, saline soil. It appears from a few maps that the Luni River once might have passed through the Rann from east to west (see, for instance, Pak. Maps 2, 4 and 15). One of the earlier European travellers, Captain G. L. Jacob, wrote in 1844 in the "Transactions of the Bombay Geographical Society" as follows: "I do not know any English word exactly corresponding to Rann. It is neither exclusively a swamp, nor a fen, nor a desert, nor a salt marsh, but a compound of all."

5. The Rann was, as a rule, treated by the British Administration as a swamp or marshland, as appears from maps of late British times, the overwhelming majority of which used the marsh-symbol in showing the Rann. This symbol appears in the maps superimposed on washes or tints used for water-covered surfaces or for dry land. On two occasions, the British Administration even

took the decision to assimilate the Rann to a swamp or marshland and it took it at a high level. The cases were as follows:

In 1906, proofs of the Fourth Edition of the 32-mile map of India were under consideration. The Government of India observed: "It does not appear to be correct to show the Ran of Cutch as though it were all water. The symbol for a swamp might be used." The second case occurred in 1913, when the Fifth Edition of the same map was under preparation. The previous edition, dated 1908, was then subject to renewed examination. Among the decisions of the Government of India on various remarks was the decision that the bluish tint with which the Rann of Kutch was coloured should be replaced with yellow as "[it] appears more correct to colour the Dry Rann as a marsh than as a lake..." (Ind. Doc. A-30, p. 196.) The Fifth Edition consequently has a yellow tint colouring for the Rann, using the bluish tint only for five limited portions of it, viz. those which were normally wet also in the dry season.

Both editions, the Fourth with the bluish tint for swamp over the whole Rann and the Fifth with the yellow tint over most of the Rann, have over the whole surface of the Rann the usual marsh symbol (with the exception of the surface of two out of the five wet portions of the Rann on the Fifth Edition).

The Tribunal has also listened with interest to descriptions of the Rann which emphasise the blinding glare from the salt which covers its surface. Thus, one author states: "Nowhere is that singular phenomenon, the mirage of the desert... seen with greater advantage, than in the Rann." The Rann as *terra hospitibus farox* is said to be the habitat merely of great numbers of wild asses, found nowhere else in India. Captain MacMurdo, who a year later became the first British Resident in Kutch, wrote in 1815 also that "the Rann, when full, abounds in fish of various kinds, some of which are peculiar to it, I believe, and are exceedingly delicious".

Having in mind all that has been said about the Rann, and remembering the film and photographs which have been shown to it, the Tribunal has acquired a vivid impression of the "strong geographical personality" of the Rann – this Rann which is "without a counterpart in the globe". This impression has guided the Tribunal in its appreciation of the evidence in determining the issues involved.

2. *The "Median Line" Concept*

The question of the nature of the Rann took the proportions of an essential issue because the thesis of Pakistan was that the Rann is a "marine feature", i.e. akin to an inland sea or lake, is for Pakistan the point of departure for a reasoning and an argument that lead, finally, to Pakistan's position that its claim line is well founded in law and geography.

The fundamental thesis of Pakistan on this point was formulated at the very outset of the case, in the Pakistan Memorial, paragraphs 40 and 41, which read:

> "The Rann has been, and is governed by the well established principles of the median line, and of equitable distribution. The islands in the Rann and the portions of the Rann between its shores and those islands, have been and are governed by the principle of the 'nearness of shores'."

The Indian position is diametrically opposed. In the Indian Counter-Memorial, paragraph 52, it is said:

> "The Rann has not been and is not governed by any alleged principle of the median line or of equitable distribution or of 'half and half' as alleged by Pakistan. It is also not true that the 'islands' in the Rann and the portions of the Rann between its 'shores' and those 'islands' have been and are governed by any alleged principle of 'nearness of shores'."

The case of Pakistan is argued essentially along the following lines.

Contemporary International Law is in favour of the principle of the median line as a boundary in cases such as that of the Rann of Kutch. The Rann, being a marine feature, can best be assimilated to an inland sea or lake; such surfaces, when surrounded by territories of two States, are most usually divided along a median line. Also, admittedly the Rann was at one time sea; the whole of its surface did not then belong to any of the coastal States. When the nature of that sea underwent certain changes, that by itself could not convert the whole of its surface into a territorial extension of only one of those coastal States; on the other hand, it could be regarded as a process of accretion. If accretion takes place at both banks, then the accretion nearest to each bank would belong to that bank until the two accretions meet; for this reason the surface of the Rann should be treated as an accretion to neighbouring States; in this case, again, it should be allotted to them in equal shares divided by a median line. And if the Rann were to be treated as a marsh or swamp – which would be wrong – or as a desert – which would be equally wrong – it would have to be considered as a wide natural barrier that separates two States; such a barrier also would normally and should equitably be divided into two halves along a median line.

In support of this argument, Pakistan relies upon three writers on International Law, viz. Colombos, Oppenheim and Ch. Hyde.

The relevant passages from Colombos read:

> "Land-locked seas, lying entirely within the boundaries of one State, form part of the territory of that State. On the other hand, when the shores of a land-locked sea belong to two or more countries, and there is no agreement to the contrary among them fixing the limits of their respective boundaries, the sovereignty of each must be respected in the zone of its territorial waters, and the legal régime in the central part is then similar to that on the high seas. As there is usually no necessary trade or navigation in inland seas, the line of demarcation is drawn in the middle." (Colombos, *International Law of the Sea*, 4th Ed., 1959, p. 164.)

> "Lakes similarly form part of the territory of the State whose land entirely surrounds them, as, for instance, in the case of Lake Windermere. Where such lakes are bordered by land belonging to different Powers, such as Lake Constance which is bounded by German and Swiss territory, Lake of Geneva (French and Swiss territory) and Erie, Huron, Superior and Ontario (Canada and the United States), the practice is that, by treaties between the bordering States, arrangements are made as to the waters belonging to each State and as to the rights of navigation in the lakes. Where no such agreement is in force, a reasonable solution appears to be that the boundary should be fixed by the middle line, unless there exists a 'thalweg' or mid-channel in the lake, in which case the same principles are to be followed as in the case of rivers." (Colombos, *op. cit.*, pp. 167–8.)

In this context reference might be made to one of the maps relied upon by Pakistan, namely, Pakistan Map 4 of 1826, where the boundary between Sind and the Indian States to the south seems to follow what might have been the Luni River in the middle of the Rann.

The passage from Oppenheim reads:

"Boundary lakes and land-locked seas are such as separate the lands of two or more different States from each other. The boundary line runs through the middle of these lakes and seas, but as a rule special treaties portion off such lakes and seas between riparian States." (Oppenheim, *International Law*, Vol. I, 8th Ed., 1966, p. 533.)

And the passage from Hyde reads:

"When a lake or interior sea is surrounded by the territories of two or more States, such as Lake Constance, although not constituting a part of the inland waters of any one of them, it may, nevertheless, be regarded as belonging to them in proportional parts, if those States are so agreed, and provided no well-defined and grave international interest supervenes. The Great Lakes of Ontario, Erie, Huron and Superior, and their water communications constituting the boundary between the United States and Canada are wholly territorial. The line of demarcation passes through the middle of the area." (Hyde, *International Law*, Vol. I, 2nd Ed., 1947, p. 483.)

Pakistan asserts that the principle of a boundary along the median line is generally accepted for other kinds of water boundaries such as rivers which form the boundary between two States. Pakistan adds that this principle was applied in India under British Paramountcy;

In this respect Pakistan relies on the publication, Tupper, *Indian Political Practice*, 1895. From this publication the following quotation is cited:

"It is interesting to note that in dealing with river boundaries as between British Indian and State territory, the Government of India have, to a great extent, followed International Law; and that International Law, so far as it relates to this subject, is derived directly from Roman Law. The rules of International Law upon which we have largely acted were very clearly and correctly stated by Mr. Aitchison in a note of October 17, 1871, recorded in connection with certain questions relating to the boundary of Oudh and Nepal. 'If the opposite banks of a river', he said, 'are in the possession of two nations, neither of which as in the present case, has dominion over the entire river, the rule of boundary is that of the *Thalweg*, or a line drawn along the greatest depth of the stream. Grotius and Vattel speak of the middle of the river as the line of jurisdiction, but Twiss (I, 287) says modern publicists and statesmen prefer the more accurate and equitable boundary of the *mid-channel*. If there be more than one channel the deepest channel is the mid-channel and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of the bed." (Tupper, *op. cit.*, Vol. II, p. 22.)

If the Rann is to be considered an accretion, then Pakistan relies on the following passages in Oppenheim:

"Accretion is the name for the increase of land through new formations. Such new formations may be only a modification of the existing State territory, as, for instance, where an island rises within a river, or part of a river, which is totally within the territory of one and the same State; and in such case there is no increase of territory to correspond with the increase of land. On the other hand, many new formations occur which really do enlarge the territory of the State to which they accrue, as, for instance, where an island rises within the maritime belt. And it is a customary rule of the Law of Nations that enlargement of territory, if any, created through new formations, takes place *ipso facto* by the accretion, without the State concerned taking any special step for the purpose of extending its sovereignty. Accretion must, therefore, be considered as a mode of acquiring territory." (Oppenheim, *op. cit.*, p. 563.)

"The natural processes which create alluvions on the shore and banks, and deltas at the mouths of rivers, together with other processes, may lead to the birth of new islands. If they rise on the high seas outside the territorial maritime belt, they belong to no State, and may be acquired through occupation on the part of any State. But if they rise in rivers, lakes, or within the maritime belt, they are, according to the Law of Nations,

considered accretions to the neighbouring land. New islands in boundary rivers which rise within the boundary line of one of the riparian States accrue to the land of such State, and islands which rise upon the boundary line are divided by it into parts which accrue to the land of the riparian States concerned. If an island rises within the territorial maritime belt, it accrues to the land of the littoral State, and the extent of the maritime belt is now to be measured from the shore of the new-born island." (Oppenheim, *op. cit.*, p. 565.)

Pakistan points out that this principle also was applicable in India under British rule. Tupper quotes the following passage of Aitchison:

"Accretion by alluvion belongs to the nation possessing the bank on which the gradual increment takes place, but no change of jurisdiction takes place when land is suddenly cut off by a change in the course of a river and the land cut off is capable of identification." (Tupper, *op. cit.*, p. 23.)

According to Pakistan, even if the Rann is a marsh, a swamp, or a desert and not an inland sea or a lake, as contended by India, it will still constitute a barrier to be divided along the median line. In support of this argument Pakistan relies on Jones, *Boundary-Making*, 1945. Dealing with the question of boundaries in marshes and deserts, this author considers such natural features as barriers that separate neighbouring States and can therefore be divided. The line of division can be, in the case of swamps and marshes, an artificial line based on convenience for demarcation and administration and, in the case of deserts, geometrical lines, i.e. straight lines to be modified if either side of the feature is sinuous. Pakistan refers to Boggs, *International Boundaries*, 1940, which gives four concepts of a median line and argues that the concept relating to the horizontal plane can alone be relevant for an entity like the Rann. Pakistan argues therefrom that in the case of a marsh, the rule is the same but modified with reference to special features; there being no special features in the Rann, the rule is the same both in the case of a marsh and the case of an inland lake, so far as the Rann is concerned. If it were to be regarded as a desert, the rule would still remain the same because it has sharp edges, and it is uniform between those edges.

In connection with the question of a median line, Pakistan asserts that application of such a principle accords not only with International Law but also with "Dictates of natural law"; this assertion is evidently to be understood as a way of introducing the principle of equity as a part of International Law. The same principle is relied upon by Pakistan also when it stresses the necessity or advisability of delimiting the boundary of the Rann in the spirit of the formula of "equitable distribution".

In this connection Pakistan refers to the opinion of Tupper, viz. that International Law was applied in resolving matters between British India and the Indian States and among the Indian States *inter se* only at the option of the Paramount Power. Pakistan also refers to the Kennedy Valuation Judgment of 1898, dealing with certain disputes between Kutch and Morvi, where it is said: "... international law and English law are alike inapplicable to the case of two States like Cutch and Morvi except so far as they embody precepts of natural law". (*Kennedy Valuation Judgment*, p. 27.)

Pakistan points out that during the British period, the rights over "bets" or over portions of the Rann were investigated several times and each time the

result of the investigation or enquiry showed that these rights, as a matter of fact, stood divided along the middle, showing the existence of a regional custom.

The Indian answer to these arguments of Pakistan is essentially the following:

(*a*) The Tribunal is to ascertain where the boundary was and is and not where it ought to be according to abstract principles; the object is not to choose or design a new boundary with a freedom of allotting this or that portion of the Rann to one or the other of the two neighbours.

(*b*) If the other evidence shows that the Rann was not a part of Sind but a part of Kutch, no question of median line arises.

(*c*) The Rann is to be treated as land and not as a feature which partakes so much of the qualities of the sea, a lake or a river that one can apply to it any principle which may be applicable to those particular features. None of the principles which are said to attach to those features can apply to the Rann at all.

(*d*) There is no general rule in International Law that a water boundary has to run along a median line that would divide the body of water into two halves. It can and does run across or along bodies of water or at the border in the most different ways.

(*e*) The choice of a boundary in or along a body of water is subject to the same general rule of International Law as any other choice of boundary, this general rule being that it is the consequence of an agreement, a treaty or any other recognised legal source.

India says that the writers relied upon by Pakistan – Jones, Colombos, Boggs, Oppenheim – use a phraseology which has at the back of it the notion that a tribunal or an authority is going to divide and make a boundary; but the function of this Tribunal is to ascertain where the boundary has been and is and not to ascertain where the boundary ought to be.

India cites, *i.a.*, the following passages:

(i) "Sometimes a boundary line lies along one bank of the River, while the whole bed is under the sovereignty of the other riparian State." (Starke, *An Introduction to International Law*, 1963, p. 174.)

(ii) "Water boundaries in lakes, straits, and rivers are of several distinct types; generally they follow: (1) the shore, (2) the median line, (3) the navigable channel or Thalweg, or (4) an arbitrary geometrical line such as a parallel of latitude or an azimuth line. Of these four types the median line is least clearly defined at present." (Boggs, *op. cit.*, pp. 177–8.)

(iii) "There is no general rule on the suitability of lakes as boundaries or on the most suitable line for a boundary within a lake." (Jones, *op. cit.*, p. 136.)

(*f*) As regards the alleged principle of nearness of shores, which in Pakistan's submission applies for sovereignty over the bets in the Rann, India argues that International Law knows of no such principle. In this connection, Judge Huber's Award in the Island of Palmas Case was quoted:

> "In the last place there remains to be considered *title arising out of contiguity*. Although States have in certain circumstances maintained that islands relatively close to their shores belonged to them in virtue of their geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a State from the mere fact that its territory forms the *terra firma* (nearest continent or island of considerable size). Not only would it seem that there are no precedents sufficiently frequent and sufficiently

precise in their bearing to establish such a rule of international law, but the alleged principle itself is by its very nature so uncertain and contested that even Governments of the same State have on different occasions maintained contradictory opinions as to its soundness. The principle of contiguity, in regard to islands, may not be out of place when it is a question of allotting them to one State rather than another, either by agreement between the Parties, or by a decision not necessarily based on law, but as a rule establishing *ipso jure* the presumption of sovereignty in favour of a particular State, this principle would be in conflict with what has been said as to territorial sovereignty and as to the necessary relation between the right to exclude other States from a region and the duty to display therein the activities of a State. Nor is this principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty; for it is wholly lacking in precision and would in its application lead to arbitrary results. This would be especially true in a case such as that of the island in question, which is not relatively close to one single continent, but forms part of a large archipelago in which strict delimitations between the different parts are not naturally obvious." (Island of Palmas Case, *United Nations Reports of International Arbitral Awards*, Vol. II, p. 831, at pp. 854–5.)

In conclusion, the Indian case runs, there is no principle that can be applied in defining the sovereignty over the bets in the Rann. The nearness of shores could only be an argument for the allottment of bets if they had to be freely allotted. But this case is not of such a character. The object is to ascertain to whom the bets belong and not to whom they ought to belong according to this or that principle.

As regards accretion, India argues that the sea dried up centuries ago and that at that time the principle of accretion did not exist. But supposing that such a principle did exist in those remote times it is evident that the neighbours did not even think of it, did not apply it and did not treat the Rann as governed by this principle subsequently; therefore, this principle cannot be applied now.

(*g*) In the same spirit India deals with Pakistan's submission on "equitable distribution" as being an application of "natural law" and of the principle of equity as a part of International Law. India argues that the terms of reference of the Tribunal do not make it competent to distribute territory but only to find a boundary, to ascertain a fact. Therefore there is no room for applying general principles of equity.

CHAPTER III: HISTORICAL BACKGROUND

The history of Kutch and Sind and the history of British rule in India were dealt with on many occasions by both Parties for three main reasons:

(*a*) to put elements of the case in proper historical perspective;

(*b*) to attempt to establish historical titles to the whole or to part of the disputed area or to contest such attempts;

(*c*) to ascertain the role or competence of authorities involved in the past in settling questions of territory or boundaries in the area.

1. *Kutch and Sind until the Advent of the British*

(*a*) *Kutch*

The essential information contained in the Indian Memorial may be summarised as follows:

The ancient history of Kutch is not relevant. The modern history of Kutch dates from the ninth century when some members of a tribe called Sammas, who ruled in lower Sind; migrated to Kutch, gradually gained control over the local races and assumed sovereignty over Kutch. In the twelfth century, Laka, the son of Jada became the ruler. His dynasty came to be known as the Jadejas. In 1548 a ruler of this dynasty, called Khengarjee, assumed sovereignty over the whole of Kutch under the title of Rao. He was a tributary of the Kings of Ahmadabad, the rulers of Gujarat. During the reign of his son, Bharmuljee, the Government of Gujarat passed from the Ahmadabad Kings to the Moghul Emperors, who were ruling at Delhi. Bharmuljee tried to make himself independent of the Moghuls but, after suffering two defeats, he agreed to the supremacy of the Moghul Emperors, who confirmed him in his position as the ruler of Kutch but required him to pay tribute.

The reign of Rao Daisuljee in the early eighteenth century (he ascended the throne in 1718) was a period of troubles. The country was first threatened by invasions from Ahmadabad and a tribe from Sind, the Sodas, made incursions into Kutch. With the help of a talented Minister, Devkaran Seth, the Rao succeeded, later, in establishing military posts across the frontier, in Sind and Kathiawar. A military outpost was established at Virawah in Parkar and a fort was built at Rahim ki Bazar in Sind. According to evidence submitted by India, the extent of the foothold of Kutch beyond the northern edge of the Rann in that period was as follows:

(*a*) According to Lieut. Alexander Burnes' *Memoirs* (1830), when the author served in Kutch as Deputy Assistant Quartermaster General: "The Raos of Cutch had at no distant period three tannas in the dominions of Sind, viz. Ballyaree, Raoma Ka Bazar and Budeena their right to which was undisputed . . .";

(*b*) According to a letter of Lieut.-Col. Roberts, Political Agent, Kutch, to the Government of Sind, dated 1844:

> "His Highness formerly, possessed Raoma Ka Bazar and 3 or 4 small villages dependent on it from which he derived an income averaging for the last 20 years that it belonged to the Kutch State 39,000 Correes. The deserted village called 'Wustee Bunder' nearly opposite to Luckput, was also formerly a possession of the Bhooj State.... Raoma Ka Bazar was lost to the Cutch Durbar in 1741, and Wustee Bunder about 50 years since..." (Ind. Doc. A-27);

(*c*) According to Captain Charles Walter's *Brief Sketch of the History of Kutch,* prepared in 1827 when the author served as Assistant Political, Kutch, the Kutch Minister.

> "Deokaran Sett...carried an army into Parkur and established a Thanna at Veeravow, to punish the Sodas, who made incursions into Kutch... In Sind he was called in by the Rymas, who, though converted Musulmans, had sprung from the same sources as the Jharejas (Sammatree), and, to secure his acquisition, built a fort at the town now called Rymaka Bazar and extended the Rao's influence in that quarter."

Similar statements were made by Captain MacMurdo (1819), Mountstuart Elphinstone, the Governor of Bombay (1821), and the Bombay Gazetteer (1880).

India concludes by saying that since the Rao's possessions extended to the territories beyond the Great Rann it necessarily follows that the Great Rann was also within his territory. Even though he lost these possessions beyond the Rann he did not lose his sovereignty over the Rann.

Under Rao Daisuljee's son, Rao Laka, the outposts of Kutch beyond the northern edge of the Rann were abandoned. This occurred in the middle of the eighteenth century.

A reign of great disturbances was the next reign, that of Rao Godjee, who ascended the throne in 1760. During this region, Kutch was invaded four times by armed forces of Sind. Two invasions were commanded by a Sind ruler called Ghulam Shah, of the Kalhora dynasty, the third by his son, Sarafraz, and the fourth by their successor, Abdul Nabbi. The respective dates of these invasions were 1762, 1764, 1775 and 1777.

The most devastating invasion was the first one, in 1762. The Sind army amounted to 80,000 men and the decisive battle, the battle of Jhara, was a heavy defeat for Kutch. Ghulam Shah asked, in consequence, the Rao's sister in marriage. Failing to obtain satisfaction, he threw up an embankment on the Puran River at Mora in Sind and shut out its waters which irrigated a fertile district of Kutch in the Great Rann area known as Sayra.

The invasion of 1764 ended with the withdrawal of Ghulam Shah to Sind after leaving a garrison of 5,000 men at Lakhpat in Kutch. This garrison was withdrawn by Sarafraz.

India mentions that each ruler of Kutch used to assign certain lands to his younger sons who came to be called chiefs. On the death of a chief, the lands were divided amongst his sons, and the eldest son, who got a larger share, became the chief. Thus, in course of time, a number of chiefs and estate holders came into existence. Though they owed allegiance to the Rao, they exercised unlimited authority within their own lands. They were the Rao's hereditary

advisers, and the Rao could call on them to serve him in the event of war. They were not, however, always loyal to the Rao, and some of them often rebelled against the Rao. Because of their number and authority, they were in a position to exercise a powerful influence in the affairs of Kutch.

The existence of this peculiar aristocracy, called the Jadeja Bhayad (meaning the Jadeja dynasty's brotherhood), was largely responsible for the most disturbed state prevailing at the end of the eighteenth and the beginning of the nineteenth century. Kutch then came to be divided into two separate entities. In its traditional capital, Bhuj, the administration came to be conducted by an energetic and able soldier, Jamadar Fateh Mohammed, who became the *de facto* ruler, while a chief called Hansraj ruled independently over the southern district of Mandvi, in which the main harbour of Kutch is situated.

Such was the situation when the British appeared in the neighbourhood of Kutch, between 1804 and 1809.

Pakistan's account of the relevant history of Kutch proceeds in a different manner. Pakistan relies, firstly, on the following passages from Rushbrooke Williams:

> "It would hardly be an exaggeration, indeed, to say that during most of the age of pre-history, throughout the dawn of history, and right into mediaeval times, Kutch had no separate existence; it was regarded as part of the dominions of whatever dynasty or race chanced to rule over the lands now known as Sind and Gujarat and proved itself powerful enough from one base or the other to control the island state lying between them." (*The Black Hills; Kutch in History and Legend,* 1958, p. 59.)

Hiuen-Tsang, the Chinese traveller of the seventh century, reported that towards the end of the sixth century Kutch was conquered by a Sind ruler (*op. cit.,* p. 66), though towards the end of the seventh century the authority of Sind was weakening (*op. cit.,* p. 68), and was lost altogether after the Arab conquest of Sind in A.D. 712. Although the Arabs defeated the chief of Kutch in expeditions between A.D. 724 and 738, they do not appear to have settled seriously in Kutch until the ninth century (*op. cit.,* p. 69). The Kathi tribesman of Sind captured Kutch for a period, till in the eleventh century some rulers of Gujarat divided it among themselves (*op. cit.,* pp. 68, 70). The Gazetteer of the Province of Sind by A. W. Hughes, of 1874, was quoted to the effect that around the year A.D. 1000, Kutch was included in the dominions of the Ghaznivide dynasty. About 1520, a Sind ruler defeated Kutch in the first battle of Jhara, a town in south Kutch. According to Walter the position in 1716 was:

> "The possessions of the Raos of Kutch were extremely limited; the trifling trade of the Bunders, the town of Anjar..., the Korah Purgumma, and likewise some villages in Meeanee, and Rapoor in Wagur, were the only sources from which a revenue had been derived." (Walter, *Brief Sketch of the History of Kutch,* 1855, p. 103.)

According to Pakistan this passage suggests that not even the whole of Kutch was under the Rao at that time.

Pakistan has produced Pakistan Document B.302 (1865) to show that the ruler of Kutch had little control over Wagur on the mainland of Kutch, and was in no position to control the Rann against the dominant position of Sind. Pakistan Document B.303 (1821) also indicates that the State of Radhanpur had acquired a foothold in Wagur, across the Rann, and had received tribute from it.

Pakistan adds that still another invasion of Kutch from Sind was made in 1781 by Fateh Ali Khan of the Talpur Dynasty. Pakistan further states that Sind had taken possession of the island of Khadir and levied contributions upon the tributaries in Wagur. With the advance of a British force, Sind evacuated Khadir, probably in 1816. However, a new attack was launched against Luna in 1826.

Pakistan points out that according to Walter the outposts of Kutch beyond the Rann were not abandoned but expelled (*op. cit.*, p. 112).

(*b*) *Sind*

The essential information contained in the Indian Memorial is as follows:

The early history of Sind is fragmentary and obscure and is also not relevant. Sind passed through several vicissitudes, being ruled by a number of foreign conquerors time and again. Sind emerged as a distinct political entity when the Kalhoras rose to power in the eighteenth century and extended their authority over a large part of the country, although it was not wholly independent. It was dominated by the Durani rulers of Kandahar.

It was Ghulam Shah Kalhora who became independent of Kandahar and boldly seized the reins of government after a long struggle for supremacy.

The violence and tyranny of Sarafraz Khan and of his successors led to the overthrow of the Kalhora dynasty. Sarafraz Khan, out of spite or jealousy, got the chiefs of the Baluch tribe of Talpurs (who had been serving under him) treacherously murdered. His death was followed by a period of unrest during which the Talpurs tried to avenge the death of their chiefs, while the successors of Sarafraz tried to suppress them. Finally, the Talpurs emerged victorious and Mir Fateh Ali Khan Talpur seized power in 1783.

Alarmed at the measures which Fateh Ali Khan took to establish his authority, his relatives, Sohrab Khan and Thora Khan, fled, seized Khairpur and Shah Bander (parts of Sind) and repudiated the authority of Fateh Ali Khan. Thus, the province remained divided into three separate principalities, namely, Hyderabad or Lower Sind under Fateh Ali, Khairpur or Upper Sind under Sohrab, and Mirpoor under Thora.

In Hyderabad, Fateh Ali shared his power with his three brothers, Ghulam Ali, Karam Ali and Murad Ali; and due to their real or apparent unanimity, the brothers were called the "Char Yars" or Four Friends. They came to be referred to as the Mirs or Amirs of Sind.

In 1758, the British appeared in Sind for the first time and established factories which, however, had to be withdrawn in 1775. The commercial intercourse between the British and Sind was revived in 1799 during the reign of Fateh Ali.

Parkar was nominally under the Amirs of Sind.

On this presentation by India of the history of Sind before the advent of the British, Pakistan had several remarks to make.

Pakistan places reliance on a statement made by Mr. Butler, the Under-Secretary of State for India, to the British Parliament in 1936: "... Sind, which earlier than any part of Moslem India was established as a separate unit ..." (Ind.

Doc. TC-46, p. 513). Pakistan comments that from the conquest of Sind in A.D. 712 by Mahommed Ben Kassim, through the centuries, Sind had remained distinct as a integrated and ethnic unit. It was this unit, in its entirety, which was returned to the Moslem Dominion of Pakistan in 1947 when the British withdrew from the sub-continent.

The Arab rulers in Sind had been replaced by the Sumra dynasty in the eleventh century and the rule of Dodo in that country was of great vigour and his authority was acknowledged from Kutch to Nasarpur. The Sumras were followed by the Arghun dynasty in the sixteenth century. Kutch attempts to help the last Sumra ruler, named Firoz, led to the first battle of Jhara. For the next two centuries, Sind became a province of the kingdom of Delhi till the Kalhoras, who were the viceroys under the Moghuls, asserted their Independence in the early eighteenth century (Lambrick, *Sir Charles Napier and Sind,* 1952, p. 11). The Kalhoras, however, found themselves obliged to pay tribute to the Durani rulers of Afghanistan.

The East India Company had maintained factories in Sind from 1635 to 1662 and from 1758 to 1775. However, political envoys came to Sind first in 1751, during the reign of Ghulam Shah Kalhora, and for the second time in 1799 during the reign of Fateh Ali Khan (Huttenback, *British Relations with Sind 1799–1843,* 1962 Ed., p. VII, 2).

It was not correct that the victorious ruler of Sind threw up an embankment at Mora to punish the Rao of Kutch. The waters of the Puran River could be more profitably used further in the north and it was apparently for that reason that they were diverted and not out of malice.

Pakistan further objects to the Indian statement that the district of Parkar was "nominally" under the Talpur Amirs when the British dealt with these rulers in 1819. It said that Parkar was at that time under the control of Sind, as is clear, *i.a.,* from Indian Documents A-90 to A-93 wherein the British authorities asked the Amirs of Sind to suppress the banditti in Parkar.

Pakistan further cites a Memorandum of the Political Agent, Kutch, of 9 November 1864 in which it was stated that the conquest of Kutch was undertaken and effected in alliance with the chiefs of the province, that before the British connections with Kutch the District of Wagur was practically independent, and that all the Kutch Darbar could do was to establish a nominal show of authority over it.

Several other remarks of Pakistan relate to an issue that was later often mentioned and debated in the oral hearings. It is the issue of the interpretation and appraisal of the Kutch-Sind wars in the eighteenth century with relation to the question of the possession of or dominion over the Rann by one or the other of the two belligerents.

Pakistan states that so far as the Rann was concerned, each time it was the rulers of Sind who crossed it and manifested effective control and dominion over it.

With reference to the Kutch outposts beyond the northern edge of the Rann, Pakistan submits that if any inference that the Rann was controlled by the rulers of Kutch is drawn from the alleged establishment of posts by Kutch in

Sind, posts which were later abandoned, an inference that it was controlled by Sind would follow *a fortiori* in respect of the establishment of the garrison of 5,000 men by the rulers of Sind at Lakhpat in Kutch and, being later in point of time, would remain as the latest position till the contrary is shown.

Even if it be assumed that the loss of the possessions beyond the Rann did not automatically imply the loss of the alleged sovereignty of the Rao of Kutch over the Rann, the subsequent victorious attack on the mainland of Kutch by Ghulam Shah Kalhora of Sind would necessarily mean that any vestige of the alleged "sovereignty of the Rao" over the Rann was thereby completely obliterated. It is not denied by India that Ghulam Shah Kalhora did attack Kutch. Nor is it denied that he established a garrison of 5,000 men at Lakhpat. It is also clear that the garrison so established remained on the mainland of Kutch on the opposite side of the Rann for nearly ten years until Sarafraz Khan Kalhora voluntarily withdrew it because it was needed elsewhere. Even after the withdrawal of the garrison the rulers of Sind continuously crossed over to Kutch and, in all the engagements that took place, it was invariably on the mainland of Kutch that the fighting took place. As a matter of fact, the control of the rulers of Sind over the Rann is demonstrated by the inability of Kutch to control the raids that were made upon it across the Rann.

India takes a different view. It states that while it is true that the former rulers of Sind crossed the Rann at least four times between 1762 and 1781 it is not true that they manifested effective control and dominion over the Rann. As stated by Dr. James Burnes in his book *Narrative of a Visit to the Court of Sinde, with a Sketch of the History of Cutch* (1829), Sind did not succeed in forming a permanent settlement on any of the four occasions when Kutch was invaded. Hence, in India's submission, it is clear that the crossings of the Rann were by way of military forays without the intention or the result of occupation of the Rann.

In oral argument, Pakistan placed the eighteenth century wars in the context of a much longer past and elaborated the thesis of the "main current of history". Pakistan stated that, as can be seen from the history of Sind, there is a kind of main current of history, beginning with the seventh century and continuing thereafter, of which the orientation each time is: Sind is dominant over Kutch. At one time Kutch is a part of Sind. It is dominated by Sind, it is ruled by Sind, it is attacked by Sind. Sind may not be able to hold it or may decide not to hold it. Sind may go away. But time and again this keeps happening. That constitutes a main current.

Then comes the period of Devkaran Seth who established Kutch outposts beyond the northern edge of the Rann. On this period Pakistan states that, beginning about 1730 and ending 1741 or soon afterwards, a matter of about eleven or twelve years, a man called Devkaran Seth swam against the main current of history and established some thanas at Virawah and Rahim ki Bazar, but, as the historians testify, those thanas were expelled from Sind. This is an interlude which, far from establishing a current, on the contrary merely emphasises and underscores the main current.

After this interlude, the main current begins to flow again in the same direction. There is an attack by the Sind ruler followed by another attack, followed

by a third attack. Each time Kutch is the sufferer, the Rann is crossed again and the current continues to flow. Except for this little interlude, there is no change at any time in its direction.

On the invasions of Kutch by Ghulam Shah Kalhora and his successors, Pakistan adds that crossings of the Rann occurred from different directions. While Ghulam Shah crossed the Rann via the Nara route, Sarafraz took the route of Sumrasir and Mir Fateh Ali the route to Chowbari in Wagur. So at any place the Rann could be crossed by the Amirs, when they chose to, demonstrating the control that they had.

In response to India's argument that the crossings were by way of military forays without the intention or the result of occupying the Rann, Pakistan points out that the Rann proper is not an area which is capable of occupation. Effective and full control of such an area cannot be achieved unless both shores are controlled. Hence it is only the ability to cross it, and the ability to prevent others from crossing it, that will show who is controlling it.

Pakistan concludes that while Sind had on several occasions in the past a full control over the Rann by way of controlling both shores and for the rest of the time an incomplete control by way of its ability to cross the Rann and to prevent Kutch from crossing it, Kutch never had any degree of control. While India states that the Rann belongs to Kutch and has always belonged to Kutch, and that there has never been a time when it did not belong to Kutch, India does not offer any proof of its belonging to Kutch and does not indicate the source of its title. India merely asserts, and the demonstration that is made by history contradicts that assertion.

India's reply to the above points may be summarised as follows:

(i) The distant history is irrelevant. If one goes so far back as is done by Pakistan, one might say that the Italians own France because Julius Caesar crossed it 1900 years or more ago. However, we are concerned by and large with the period of the nineteenth century. One reason why it is not possible to go much farther back is that up to comparatively recent times the whole state of affairs was a shifting one, with no crystallised States on either side. At the most, Kutch certainly achieved stability about the beginning of the eighteenth century, and Sind perhaps even later.

(ii) As for the direction of the so-called current of history, it was in no event a one-way current. One could say that it was an alternating current in the sense that some people kept on one side for some time, then some others came across at other times and yet others had the strength to cross a third time.

In this connection India points out that before being defeated in 1520, Rao Khengar established posts across the Rann at Rahim ki Bazar and Virawah to protect himself from possible attacks from Sind and also intervened in the politics of Sind.

At the beginning of the nineteenth century, the Rann was crossed again from the Kutch side, when Fateh Mohammed dispatched troops to Parkar and Sind to pursue and intercept bandits or robbers.

(iii) The invasions of Kutch by Ghulam Shah and his successors in the years

1762–81 did not have the purpose of controlling Kutch. They were undertaken as a precaution, as stated by Rushbrooke Williams. He writes:

> "A hostile Kutch was always a potential peril: on the other hand, there was no hope of embodying Kutch permanently in the Kingdom of Sind. For one thing, Kutch was too strong to be held down: even if the Maharo's forces could be defeated, the *bhayyad* and the great Rajput feudatories, secure in their strongholds, could never be effectively reduced to permanent submission. Further, the Rann, although it could be crossed by a properly equipped expedition, was too formidable an obstacle to ordinary communications to permit Kutch to be administered from Sind." (*Op. cit.*, p. 150.)

India concludes that consequently the Amirs had no intention of settling down in Kutch or making it part of their dominion or annexing any part.

(iv) Sind never controlled both sides of the Rann. With reference to the Sind garrison once established at Lakhpat, India states that in terrain of this kind, the establishment of a garrison is not enought to show control over the Rann.

(v) The ability to cross the Rann does not by itself amount to control. It might equally be said that Kutch could have crossed the Rann if it had wanted to. The mere fact that the Rann is a territory where no one stays permanently, no troops are established, no posts or force can be established, means that either party could cross over uninterruptedly.

To corroborate the submission that the whole Rann and territories beyond it belonged to Kutch in olden times India quoted in her Memorial a Note of Pakistan presented during the Indo-Pakistan Minister Level Conference on the Western Border Issues held in January 1960 where it was stated:

> "Before 1762 the whole of the Rann of Kutch up to its northern extremity, and even beyond including Rahimki Bazar and Verawow fell within the jurisdiction of the Kutch State." (Indian Memorial, para. 112.)

The Pakistan Counter-Memorial denied this statement by saying:

> "It is denied that there is no evidence to establish that at any time after 1762 the Rao was deprived of such authority as he might have had over the Rann, though it is submitted that he had no such authority." (Pakistan Counter-Memorial, para. 212.)

In its Memorial India concluded from the above that "Pakistan conceded that the territory of Sind did not include any part of the Rann of Kutch before 1762, which means that the southern border of Sind lay along the northern edge of the Rann".

The Pakistan Counter-Memorial answered:

> "The statement contained in the 'brief' presented at the Indo-Pakistan Ministerial Conference on the Western Borders, held in January 1960, to which reference has been made in paragraph 212 of the Indian Memorial, was in fact no more than an inference raised from the allegation contained in the accounts given by some writers that the Maharao had established some posts on the mainland of Sind before 1762. If such an inference does arise establishing posts on the opposite shore, then by the same token a converse inference would arise when the rulers of Sind at a subsequent date established posts on the mainland of Kutch. On a matter of history, or regarding an inference raised from a statement in some accounts, there is no question of 'admission' by a party. It is the statement of a position based on certain premises, which in the context, goes no further than an argument. It is denied that the whole of the Rann of Kutch up to its

northern extremity ever fell within the jurisdiction of the Kutch State. In any case, the alleged posts of the Rao are stated by those very writers to have been irretrievably lost in 1741, or thereabouts. When the rulers of Sind established a garrison of 5,000 men at Lakhpat, the Rann was demonstrated to be under their control, and since nothing happened thereafter to indicate that the rulers of Sind lost jurisdiction over the Rann that vested in them in 1762, that position was the existing position on the date of the Treaty between Kutch and the British in 1819." (Pakistan Counter-Memorial, para. 212.)

The Final Memorial of India answered to this:

"The statement of Pakistan in Indian Document A-24 that 'before 1762 the whole of the Rann of Kutch up to its northern extremity, and even beyond Rahim-ki-Bazar and Verravow fell within the jurisdiction of the Kutch State' is the admission of a historical fact, and not an inference drawn from the statements made by certain writers on Kutch as alleged by Pakistan. Pakistan has produced no evidence in support of their contention that the territory of Sind included any part of the Rann before 1762 or that the Sind Rulers remained in control of the Rann after that year until the British conquered Sind in 1843. They have also produced no evidence to show that the Maharao of Kutch ceded the fort of Lakhpat to Ghulam Shah Kalhora in 1765." (Indian Final Memorial, para. 112.)

The significance of the statement in the Pakistan Note was mentioned three times during the oral hearings.

Counsel for Pakistan said:

"It was pointed out that this is after all no more than a statement as to history, and history cannot be changed by statements of parties. This statement of history can be checked with the historical accounts themselves. It is accurate enough as far as it goes, but an inference is drawn which is not warranted. The reply was that this is not an interpretation, this is an admission. I have been careful to point out in the course of my submissions that if one were to pounce upon statements like that, there have been many things in the course of the oral submissions which could be treated as admissions." (Verbatim Records, p. 5157.)

"I have already explained, when dealing with that statement, that on a matter of history the way in which a particular writer of a note or a letter formulates the point is not something which is to be construed like the words of a Statute." (Verbatim Records, p. 8287.)

Counsel for India said:

"It is true it is a matter of history and it was said, 'well you cannot have an admission on a matter of history'. I do not take it to that extent, but as a statement made, I support it and I say that the statement is correct. We know that there were possessions of the Rao of Kutch beyond the Rann. May I recall to you what I said in my opening address? I said that he gave up, or was compelled to give up, those possessions on the other side. Did it mean, therefore, that he gave up the Rann, which was undoubtedly until then a part of his territory?" (Verbatim Records, p. 9552.)

2. *The Advent of the British*

The British appeared in the area of Kutch and Sind in the second half of the eighteenth century and achieved full control by 1843. They came as agents of the East India Company, a trading company with attributes of a political power – army, navy and administrative apparatus for territories taken under control.

According to the Memorial of India, which gives details on history, the chronology of the main events was as follows:

1758. Factories (settlements) of the East India Company are established in the mouth of the Indus River at Tatta and Shah Bandar in Sind.

1775. These factories are withdrawn.

1799. Commercial intercourse between the East India Company and Sind is revived when Amir Fateh Ali grants certain privileges in favour of British trade. A representative of the Company resides for some time in Sind but is later compelled to withdraw.

1803. Amir Ghulam Ali of Sind deputes an agent to Bombay, the seat of the British Governor, to apologise for the expulsion of the British agent.

1804–09. Pirates from Kutch harass British Shipping, interefere with their trade and cause losses to the allies and subjects of the Company.

1809. British-Sind Treaty providing for exclusion of the French from Sind and for an exchange of agents.

1809. Two separate British-Kutch Treaties of identical purport, one with Fateh Mohammed, the *de facto* ruler of Kutch, residing in the capital, and one with Hansraj, the ruler of Mandvi, both on behalf of Rao Roydhunjee. Under those Treaties, friendship between the Company and the Rao was affirmed and the Rao agreed that his troops should not "cross the country on the opposite side of the Gulf and Runn (lying between Kutch and Guzerat), nor shall any claim or interference be maintained therein", that he would eradicate piracy throughout Kutch and that he would not permit any establishment to be made in Kutch by any European or American power. Under a further Treaty with Hansraj the Company guaranteed his possessions of Mandvi on behalf of the Rao, to whom it was to be restored after he assumed sovereignty over the country. To give effect to this guarantee, it was agreed that the Company would maintain an agent at Mandvi.

1813–15. Incursions of inhabitants of Wagur into Gujarat and Kathiawar, allied to the Company.

1815. British expedition into Kutch under the command of Colonel East. Their troops take the town and Fort of Anjar and advance towards Bhuj. They finally negotiate with Rao Bharmuljee.

1816. Negotiations terminate in a Treaty of Alliance between the Company and the Rao. Under this Treaty the Parties stipulate that their subjects shall not cross the Rann for hostile purposes against the subjects of another. The Rao is required to reimburse the losses caused by Wagur banditti and to suppress effectively the practice of piracy; he has to agree that no foreign, European or American force of any description, or agent of any of those powers, would be permitted to pass through or reside in Kutch; and he has to cede to the Company in perpetuity the Fort of Anjar, as well as Toorea Bandar and other villages and, in addition, to pay in perpetuity an annual sum of two lakhs of koris. It is decided that a representative of the Company's Government in India should reside with the Rao in the capital. At the request of the Rao, the Company's Government is to afford him "its best advice". In a supplementary Treaty between the Company and the Rao, the British remit the debt that the Rao had agreed to make in the previous Treaty. Article 7 of this Treaty described the situation of Lakhpat as being on the borders of Sind.

1819. After the Rao's preparations to overthrow British interference, a British force marches into Kutch; Rao Bharmuljee gives himself up and, on the advice of the Bhayad, his son is raised to the Gaddi [throne] under the title of

Rao Daisuljee. As he is a minor, a Council of Regency is formed with the British Resident at the head. Subsequent to the above events, a Treaty formally deposes Rao Bharmuljee and acknowledges Daisuljee as his successor; the power of Rao Daisuljee, his heirs and successors, and the integrity of his dominions from foreign or domestic enemies are guaranteed. It is agree that a British force be left in the service of Kutch for the security of the Government of Kutch; a British resident or his assistant is to reside in Bhuj and to be treated with appropriate respect; the Jhareja Bhayad are guaranteed "full enjoyment of their possessions".

1820. A British punitive expedition is sent from Palanpur across the Rann into Parkar, a province "nominally under the Amirs of Sind", against a plundering tribe called Khosas. The Amirs also send a force to Parkar to co-operate with the British force. Subsequently an agreement is made whereby the Amirs undertake to restrain the depredations of the Khosas and all other tribes within their limits and to prevent recurrence of any inroads into British dominions; the agreement also obliges the Amirs to exclude all Europeans and Americans from Sind.

1822. The British transfer the town and district of Anjar to the Kutch Government and in return the Kutch Government agrees to pay 88,000 rupees a year to the Company.

1833. The Kutch Government is relieved of the obligations deriving from the above agreement.

1834. End of the Regency in Kutch; Rao Daisuljee comes of age and takes over the administration of the State. His reign is successful. However, in the following years, the British hold over Kutch becomes more pronounced and the administration of Kutch is virtually controlled by the representative of the British Government, called the Political Agent, and functions under the direction, control and supervision of the Government of Bombay.

1836. Maharaja Ranjit Singh, a Sikh ruler, invades Sind from the north. The Amirs, unable to resist him by force, seek British mediation. The British seize the opportunity to establish their influence in Sind on a solid basis as it is felt that Sind is a country of great importance to them, both because it commands the entrance to the Indus River, and because of its position in reference to the Punjab and Afghanistan. The British promise protection to the Amirs on condition that they receive a British agent in Hyderabad and allow a British force to be stationed in the same city. The Amirs are unwilling to accept these terms but finally agree that a British agent might be stationed at Hyderabad.

1842. Sir Charles Napier, who is in command of British troops in the Campaign of Afghanistan, reports that the Amirs have breached the agreements with the British. Negotiations on the terms of a new Treaty fail to yield results.

1843. British troops enter Sind and conquer the country which is annexed as a province under Sir Charles Napier as its Governor. A part of Sind – the State of Khairpur – is excepted. It remains faithful to the British.

1847. Sir Charles Napier retires and Sind is constituted a Division of the Presidency of Bombay. It is from this time administered by a Commissioner subordinate to the Government of Bombay.

According to India, after the conquest of Sind, Thar and Parkar were combined into a district which was administered until 1856 by the Political Agent, Kutch, through the Assistant Political Agent, Kutch, who was also Deputy Collector of that district.

Pakistan presents the situation in this area in the following way: After the conquest of Sind, Thar Parkar was managed by a Deputy Collector and Magistrate, who also held the rank of Assistant Political Agent, Kutch, in subordination to the Commissioner in Sind. During this period, the Political Agent, Kutch, was himself responsible to the Sind administration. He was not in direct relations with the Government of Bombay.

Thus, the whole area of Kutch and Sind came under the control of the British. But the legal form of their control was different in each case. Kutch remained a State, sometimes called an Indian State, or a part of India of the Princes. It was a British vassal State under British suzerainty. Sind, on the contrary, was made part of what came to be called British India and thus under direct British Administration.

This difference had many political and legal consequences and is an essential element in the present case.

During the oral hearings the Parties often referred in a non-controversial way to the advent of the British and the establishment of their control. However the Parties differ in their interpretation of the three Treaties between Kutch and the British.

The relevant articles on these Treaties are as follows:

ARTICLES OF AGREEMENT between the Honourable East India Company, entered into by CAPTAIN SAMUEL ADAM GREENWOOD, under the orders of LIEUTENANT-COLONEL WALKER, RESIDENT, with the VIZARUT JEMADAR FUTTEH MAHOMED and his son NOTIAR HUSSAIN MEEJA, on behalf of the MAHARAO SHREE ROYDHUNJEE, viz. (26 October 1809);

Article 1

As friendship exists between the government of the Honourable Company and the government of the Maharaja Anund Rao Guikwar Sena Khas Kheyl on the one part and the government of the Maha Rao Shree Roydhun on the other, it is agreed that no troops shall cross to the country to the east or opposite side of the Gulf and Runn lying between Kutch and Guzerat, nor shall any claim or interference be therein maintained.

ENGAGEMENT WITH DEWAN HUNSRAJ SAMEDASS, OF MANDAVEE (KUTCH) DATED THE 28TH OCTOBER, 1809

Articles of Engagement entered into by Dewan Hunsraj Samedass, of Mandavee Bunder, with Captain Samuel A. Greenwood, on behalf of the Honourable Company.

Article 1

As friendship exists between the government of the Honourable Company and the government of the Maharaja Sena Khas Kheye Shumsher Bahadoor on the one part, and

the government of Maha Rao Shree Roydhun on the other, I do hereby agree that no troops shall cross to the country on the opposite side of the Gulf and Runn (lying (between Kutch and Guzerat), nor shall any claim or interference be maintained therein; should any claim or dispute arise, the same shall be settled by arbitration, under the mediation of the Company.

ARTICLES of a TREATY of ALLIANCE between the HONOURABLE ENGLISH EAST INDIA COMPANY and HIS HIGHNESS MAHARAJA MIRZA RAO BHARMULJEE of Kutch, agreed to by both GOVERNMENTS, 1816.

Article 4

The subjects of the Kutch State shall on no account cross the Gulf or Runn for hostile purposes, neither shall they cross to act against the subjects of the Honourable Company or those of Sreemunt Peishwa or the Guikwar. The subjects of the aforesaid three governments shall (in like manner) not cross the Gulf or Runn for hostile purposes against the Rao's subjects. The fort of Anjar, etc., having been ceded to the Honourable Company, no objections exist to troops and stores crossing the Gulf or Runn for that place.

TREATY of ALLIANCE between the HONOURABLE EAST INDIA COMPANY and HIS HIGHNESS MAHARAJA MIRZA RAO SHREE DESSULJEE, his heirs and successors, concluded by CAPTAIN JAMES MACMURDO, on the part of the HONOURABLE COMPANY and by JHAREJAS PRUTHERAJEE, VIJERAJJEE, MERAMUNJEE, PRAGJEE, PRAGJEE MOKAJEE, ALLYAJEE, NONGHUNJEE, BHANJEE and JEYMULJEE, by virtue of full powers from their respective GOVERNMENTS, 1819.

Article 5

The Honourable Company engages to guarantee the power of His Highness the Rao Dessul, his heirs and successors, and the integrity of his dominions, from foreign or domestic enemies.

Article 13

The Rao, his heirs and successors, engage not to commit aggressions on any Chief or State, and if any disputes with such Chief or State accidentally arise, they are to be submitted for adjustment to the arbitration of the Honourable Company.

According to Pakistan the Treaties of 1809 and 1816 clearly indicate that the Rann was not a part of the Kutch and, therefore, the Rann was not included in the territory guaranteed by the British in the Treaty of 1819. Pakistan places particular reliance on a statement made in 1866 by the ruler of Kutch (Pak. Doc. B.305, pp. 21, 22, 28) that by the Treaties of 1809 Kutch had agreed that the Rann was its boundary. The Treaties of 1809 describe the Rann as "lying between Kutch and Kathiawar". Kutch was prohibited from crossing the Rann. The Treaty of 1816 places Kutch, Kathiawar and Gujarat at par in relation to the Rann. Captain MacMurdo, the author of the 1816 Treaty, also stated, while forwarding this Treaty for ratification by the British Government, that he had no hesitation to consider the Gulf and the Rann as the boundary of the British Protectorates in Kathiawar and Gujarat (Pak. Doc. B.272, para. 11).

In 1843 the Government of Bombay held that the language of MacMurdo was binding for the interpretation of this Treaty (Pak. Doc. B.300, p. 3). The Treaty of 1816 also positively identifies Lakhpat as being on the borders of Sind, thereby confirming Khori River as the historic border between Sind and Kutch.

India argues that the stipulation in the Treaties of 1809 that no troops shall cross to the country to the east and on the opposite side of the Gulf of Rann lying between Kutch and Gujarat nor shall any claim or interference be maintained therein has a history behind it. Quoting from Rushbrooke Williams and Lieut. Raikes, India says that Fateh Mohamed was a very enterprising man who had asserted the claim of Kutch to certain territory in Nawanagar on the other side of the Little Rann and had insisted that tribute should be regularly paid for it; he launched expeditions year after year to ensure that his demands were complied with. The British were at that time friendly with the States on that side and the object of the relevant clause in the Treaties of 1809 was that there should be no question of Kutch trying to levy tribute on the other side on anyone or establishing any post or staging an invasion. Rather than implying any negation of ownership or sovereignty over the Little Rann, the stipulation really justifies and supports it because otherwise, there was no point in the Rao stipulating what he did. Notwithstanding the Treaties, Fateh Mohammed continued his expeditions across the Rann and a fresh Treaty was entered into in 1816. This Treaty prohibited crossing of the Little Rann "for hostile purposes": ordinary traffic went on, there was intercourse, and the Rann was crossed by the traffic. Kutch was then an independent sovereign State and could say that as a matter of agreement it would not exercise certain rights. The prohibition of crossing by either Party for hostile purposes had nothing to do with ownership or sovereignty over the Rann. As a matter of friendship and policy and by way of peace treaty, Kutch qualified its dominion over the Rann by agreeing that, although its subjects might cross for civil and peaceful purposes, they would not go over to the other side for hostile purposes. The clauses in the two Treaties must be limited to what they say in the light of the incidents that happened: they are in the nature of a non-aggression pact, a non-invasion pact. Under these clauses the Rann did not present itself as a barrier between one side and the other, except that a limit was laid down beyond which neither side's troops could cross and neither side could cross for hostile purposes. The engagement not to do a particular thing of a very limited kind cannot be stretched as denoting not only that the Rann was made a barrier but that the Rann had always been a barrier as an independent area not belonging to one side or the other. The Treaty of 1819 guaranteed the territories of Kutch but did not define those territories. India's case is that territory of Kutch included the Great and Little Rann and what the British guaranteed was that territory which included the entire Rann of Kutch as part of the Kingdom of Kutch.

As regards MacMurdo (Pak. Doc. B.272), India says that he refers to Articles 3 and 4 and he states that he had persuaded Kutch to treat the Rann as a barrier which they were not to cross for hostile purposes but which otherwise they were at liberty to cross. These two Articles have nothing to do with the extent of Kutch; there is merely an engagement that there shall be no crossings for particular purposes. The Report of Major Short (Pak. Doc. B.300) states that the area of Kutch "exclusive of the Rann" is estimated at 6,500 square miles.

One issue related particularly to the places called Sayra and Sindri.

Sayra was an area on the eastern or on both banks of the Khori River, extending well to the north of the 24th parallel. It was a fertile, rice-growing, well-

inhabited area belonging to Kutch. Soon after 1762 the water dried up and Sayra was deserted and gradually disappeared and became indistinguishable from the Rann. According to Burnes, Sayra did not cross the river in any place.

Sindri was a place on the eastern bank of the Khori River in the Sayra, about 30 miles upstream from Lakhpat and 20 miles downstream from Ali Bandar, at approximately 24° 5′ of north latitude; it was a port for river boats, a village and a frontier post with a customs house of Kutch State. The Kutch garrison was stationed in a fort which consisted of a single tower 50–60 feet high and of a pittah (elevated tract) of 150 square yards, the whole surrounded by a 20 feet high wall.

Sindri was destroyed in a severe earthquake which shook the region in 1819 and was abandoned. It remained known as a ruin of an old fort, under the name of Juna Kotri till late in the nineteenth century. A picture of the Fort of Sindri before it was submerged by the earthquake is reproduced by Lyell, *Principles of Geology* (Vol. II, 1868), and in Alexander Burnes, *Travels into Bokhara* (Vol. I, 1839), and a picture of that fort as in 1869 appears in Memoir on the Geology of Kutch, published in *Memoirs of the Geological Survey of India* (Vol. IX, 1872). Finally all traces of it disappeared.

India maintains that there existed, before 1819, besides Sindri, one more Kutch outpost in the same area. It was situated at a place called Kaeera Nulla (nulla meaning a small canal), to the north of Sindri and almost at the northern edge of the Rann. Lieut. Burnes' *Memoir* of 1830 was quoted to prove this point.

> "The Ameers of Sind acknowledge the right of the Cutch Government to a nulla, called 'Kaeera', which is above Ullah Bund, and a place where they collected taxes to the very day of the earthquake in 1819... A short distance above the bund is Kaeera Nulla, a position where the Cutch Government collected taxes before the earthquake and the extremity of their territory on the North." (Ind. Book A-5, pp. 1, 8.)

Pakistan submits that it does not deny that until 16 June 1819 Kutch exercised control over the Sayra tract, the reconstructed contours of which appeared in yellow on Pakistan Map 105, up to and including Sindri. Pakistan does, however, deny that the Kutch control extended to Kaeera Nulla which was situated approximately 5 miles north of Sindri. On 16 June 1819 (the date of the earthquake), the port of Sindri was destroyed and the Sayra tract definitely disappeared and the jurisdiction of Kutch over them lapsed. Hence, Sayra, including Sindri, was not a possession of Kutch at the time when Kutch became a "vassal" State under British Paramountcy by virtue of the Treaty executed on 13 October 1819 between the East India Company and the rulers of Kutch, which was ratified and became operative on 4 December 1819.

Therefore, Sayra, including Sindri, was not covered by the guarantee extended to Kutch by the Treaty. Moreover, by virtue of the same Treaty, the possibility for Kutch of re-acquiring territory that it might have lost before the Treaty or of acquiring any new territory, was excluded.

India denies that Kutch lost sovereignty over Sayra after the earthquake and refers to two letters of the Political Agent, Kutch, to the Secretary to the Government of Sind which state in 1844 that Sindri was then within the dominions of the Rao of Kutch.

India disputes the correctness of the extent of Sayra as shown in the sketch prepared by Pakistan (Pak. Map 105) and of the statement that Sayra did not cross the river in any place. India also points out that Lieut. Burnes, on whom Pakistan relies, stated in his *Travels into Bokhara* and in his *Memoir* that Sayra was on the banks of the river. India says that Sayra was situated on both sides of the Khori River and extended up to the eastern side of the canal called Ghari Wah or Ghari Mandar. In support of this statment, India relies upon the observation of the Political Agent, Kutch, in his letter to the Government of Sind (1844) describing Sayra as being "on the opposite side on western banks of Koree bounded to the westward by a canal called the Garee Whah".

Pakistan, when comparing the Treaty of 1819 with the Treaties of 1809 and 1816, states that:

> "... the earlier treaties, which do bring the State into subordination, do not bring the State into the zone of the territory freezing, whereas this one does... 'What you have today, we guarantee, but what you do not have today you cannot increase, because of the operation of other clauses. If there is any different [dispute] it will go to the British. You will not settle any dispute by yourself. You will not wage war.' All the modes by which further territory may be acquired are eliminated. The result is, once this clause is put in, that Kutch will at all times be what it was on 13 October 1819, except to the extent to which the British agree to the expansion, whether by grant, cession, or arbitration of a dispute. Otherwise Kutch territory is what it was on 13 October 1819." (Verbatim Records, pp. 4127–8.)

A fundamental point in Pakistan's case is that the Treaty of 1819 brought Kutch into the political system of the British in India. The relationship between Kutch and the British Government was thereafter that of vassal and suzerain. Under this system the territories of Kutch could neither increase nor decrease without the intervention of and except through the medium of the British. Thus, Kutch "froze" in 1819. In support of these assertions, Pakistan relies on the following passages from Tupper:

> "The relations between the British Government and the subordinate States of India cannot be governed by the International Law of Europe, but must be determined by the positive engagements subsisting between them, by the principles which have regulated the actual practice and usage of the British Government as the Paramount Power in India, and by the requirements of the general interests of the Empire with which the interests of the Native States are both by treaty and by circumstances identified." (Despatch of the Government of India to the Secretary of State for India, cited by Tupper, Vol. I, p. 4.)
>
> "The principles of International Law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter." (*Op. cit.*, p. 11.)
>
> "... Native States cannot cede territory to each other, but that if they have occasion to effect a territorial exchange, this must be done with the consent and through the medium of the British Government." (*Op. cit.*, p. 22.)

After a recital of the above, Pakistan concludes that the approach in the present case has to be to determine what Kutch was in 1819, because after 1819 it could not grow.

India says that as regards the relationship between the suzerain and the vassals, one cannot take the matter beyond what is contained in the Treaty and all that can be said is that to the extent that anything was given up or subordi-

nated under the Treaty, some of the authority of the vassal was diminished vis-à-vis the suzerain, and possibly some freedom of action vis-à-vis other States; except for such limitations as appear in the Treaties, the vassals were entirely masters within their own territories. It did not or could not mean that the territory which the vassal ruled was subject to being taken away or being reduced or diminished at the will of the Suzerain Power. As between the suzerain and the vassal State the extent of territory was not a matter in respect of which suzerainty prevailed. The statement that International Law has no application between the suzerain and the vassal is not an absolute one; it may not be applicable in certain matters concerning the administration of the State but no such principle would be relevant to a question of territory. In fact, the question of International Law not being applicable has no relevance at all in the case of boundaries of territories.

In Pakistan's submission the Treaty of 1819 prevented Kutch from aggression not only on territories controlled by the British but also on independent States, like Sind prior to 1843. This was confirmed by Articles 13 and 5 of the Treaty. Had a dispute arisen in the years 1819–43 between Sind and Kutch, the Honourable Company would have had to arrange for arbitration as best they could. Aggression by Kutch on any Chief or State, as stated in article 13, would also be prevented since the guarantee in Article 5 must be deemed imperative in such a case.

Counsel for India continues:

> "This Treaty [i.e. of 1819] guarantees the territories of Kutch. It does not, of course, define those territories. An argument was advanced to the Tribunal that at this stage the territory of Kutch was frozen and that it could not be increased except with the cognizance and sanction of the British Government. But what has to be borne in mind is that my case is that at that stage, in 1819, the territory of Kutch extended up to the northern edge of the Rann. I am not claiming that the territory of Kutch was restricted to the mainland and that some part or the whole of the Rann was a subsequent increase; my case is that assuming for a moment ... that the effect of the treaty is as contended for, that the territory was frozen and therefore crystallized and defined as at that stage – that territory included the Rann of Kutch ... that what the British guaranteed was that territory which included the Rann of Kutch as part of the Kingdom of Kutch." (Verbatim Records, p. 9532.)

Counsel for India adds:

> "The Treaties have been read to you and I have already said that any suggestion that Kutch territory was in any way delimited by the Treaties themselves is not correct. The Treaties are no more than such engagements as would be entered into between any two sovereign Powers, except that so far as any claim against any other Native State was concerned or against the British themselves the matters would have to be dealt with in a particular way subject to the British Government. So far as freezing territory was concerned, I told you that it is patent from the Treaties that there was no freezing of any territory and certainly not so far as Sind or the Rann or that side of Kutch was concerned." (Verbatim Records, p. 10006.)

This last point is further elaborated by India in stating that Kutch was a sovereign State, an independent State. By the Treaty, certain limitations were put. One cannot stretch these limitations; they are explicit in the Treaties themselves. The only limitation so far as any claim to territory is concerned, is against another Indian State or as against the British, in which case it would have been determined in a particular manner. The clause by which the Rao engaged himself

not to commit aggression "on any Chief or State" and to submit "for adjustment to the arbitration of the Honourable Company" any dispute "with such Chief or State" could not cover Chiefs or States outside British control.

"Supposing", said Counsel for India, "that in 1820 Kutch had a dispute or – there was nothing to prevent it – supposing that the Sind Amirs had an invasion of Kutch ... could it have been said that this dispute must be referred to the arbitration of the honourable Company? Sind would have said: 'This is nonsense. I do not recognise any honourable Company'. ... If Kutch said immediately afterwards, 'I am going to occupy a part of Sind' the British would have said to Kutch, 'Yes, good luck to you; go and do it'. They would not have said, 'No, no: I am going to arbitrate between you and the Amirs of Sind.' The Amirs would not have had it, and it does not fall within the Treaty" (Verbatim Records, p. 10402.)

In other words: such an act of Kutch would have been in keeping with what was then and up to 1858 British policy, namely a policy of annexation of territory belonging to hostile States. In the light of this, the sense of the Treaty was to protect from possible and probable Kutch ambitions those neighbouring States where the British had prior to 1819 established their influence and which they protected, namely, the Gaekwar and Poshwa, rulers of Gujarat and Kathiawar, respectively.

Counsel for India concluded:

> "... when you come to a treaty of this kind, you must read it narrowly in the sense that when a sovereign state gives up some right, agrees to something, then it must be construed as against the person who takes away the right, not against the person who is giving up a right, because he is presumed to have given up the minimum. Therefore there is no question of freezing. All it means is that certain kinds of territory can be acquired only in a particular manner. As to the other territory, there is no limit, there is no restraint; you can do what you like. The only question is, therefore, what was the territory of Kutch at that time? My submission to you has been that this whole question of freezing is irrelevant. Assume that not an inch was subsequently added to what existed as Kutch territory in 1819. That does not affect my case because my case is that the territory of Kutch at all times, all times within a reasonable period, included the Rann." (Verbatim Records, p. 10407.)

The position of India was summarised by its Counsel as follows. The terms of Article 13 of the Treaty of 1819 would not have prevented the Rao of Kutch, during the period 1819–43, from making acquisition of territories belonging to the Amirs of Sind. He added, however, that it was India's case that, in fact, no territories were added to Kutch subsequent to the Treaty of 1819, apart from the acquisition which was the outcome of the rectification of the boundary through the Resolution of 24 February 1914.

With respect to the question whether the territory of Kutch was defined in the Treaties with the British, Pakistan states that the Rao of Kutch had himself admitted that by the Treaty of 1809 the Gulf and Rann were laid down as the boundaries of Kutch. Such an admission was made repeatedly in a letter from the Rao to the Governor and President in Council, Bombay, of 25 August 1866, *i.a.*, in the following words:

> "... trusting to the morals and engagements of the British sirkar, I declare that by the Treaty of A.D. 1809 contracted between the three governments, and which lays the Gulf and Rann to be the boundaries ..." (Pak. Doc. B.305).

Pakistan also states in the view of the Indian case that Kutch did not, in fact, increase after 1819, it has become a purely academic question whether Kutch was frozen in all directions or whether it was not frozen towards Sind. Pakistan states that freezing is complete with reference to all States, and Article 5 of the 1819 Treaty, read with Article 13, makes that clear. Pakistan denies that Kutch, or any other Indian State, was an independent State. Pakistan also states that the guarantee given by the British for the integrity of the dominions of Kutch would have become invalid if Kutch were the Aggressor against Sind. As to the arguments of India that Kutch was under no restraint by the British from occupying a part of Sind, Pakistan's reply is covered by a statement by Ilbert, given below in this Chapter, to the effect that an Indian State could not make war. However, this question is also academic since nothing of the kind happened between 1819 and 1843.

For the period between the Treaty with Kutch of 1819 and the conquest of Sind in 1843, one aspect of the situation was dealt with by the Parties at some length.

India states that at the time of the Treaty, Kutch was threatened both by marauders of Nagar Parkar, who were frequently committing depredations in Kutch, and by the Amirs of Sind who were repeatedly on the point of invading Kutch. In fulfilment of their obligations to maintain the integrity of the dominions of the Rao, the Government of the East India Company felt that the Rann should be strictly guarded so as to prevent the marauders of Nagar Parkar or the armies of Amirs of Sind from crossing it. The British regarded the Rann within the sphere of their control.

India refers to several documents (Ind. Docs. A-90, A-91, A-92, A-93 and A-94), being letters related to troubles of the British with banditti from Thar Parkar and measures taken against them. India quotes a letter of the Governor of Bombay, Mountstuart Elphinstone, dated 3 January 1820, and addressed to the Amirs of Sind where he informed the Amirs that a punitive expedition was to start shortly with the intention of punishing the marauders of the Khosa tribe. The force entrusted with the expedition would assemble at Palanpur. The letter stated:

> "The officer commanding it will receive orders to expel the Khosas from their present seats, to drive them across the desert and to prevent their returning to these countries, which we are bound to defend. It is not the intention of the British Government to occupy any part of the territories to which the Khosas resort, nor on any consideration to extend its connections beyond the Runn..."

Another letter, written on the same day by the Chief Secretary to the Government of Bombay to the Acting Resident at Baroda, is to the same effect.

A third letter, written by the Resident at Bhuj, the well-known Captain MacMurdo, to the Amirs of Sind on 21 January 1820 also assured them that the British Government, in deciding to enter Thar Parkar to punish the Khosas, had "no design of extending its frontier beyond the natural limits of the Rann".

Renewed assurances of the same kind were contained in another letter of Mountstuart Elphinstone to the Amirs, dated 4 October 1820, in which he wrote:

> "As I distinctly stated ... the British Government entertained no wish whatever of extending its connections beyond the Runn and sought only the establishment of such a state of things on our frontier, as would secure the territories of our allies from the irruptions of the banditti, who had been so long in the habit of committing depredations in our districts in the remote parts of Guzerat ..."

The conclusion drawn by India from this correspondence is that Sind is treated as ending at the northern edge of the Rann. Counsel for India added as to effect of these letters: "I shall not, for the moment, go to the extreme of saying that it [the Rann] is treated as a part of Kutch, but certainly it is not treated as a part of Sind" (Verbatim Records, p. 76).

The reply of Pakistan can be summarised as follows:

(i) These documents (Ind. Docs. A-90 to A-94) clearly indicate that the Rann, in its whole breadth, was conceived to be the boundary, and Pakistan relies on the following passages:

> "On the termination of these operations ... the British troops ... will retire within the Cutch or Kattywar frontier." (Ind. Doc. A-90, p. 238);
>
> "... it is desirable to avoid all further connections [with Sind] by studiously considering the Runn as the barrier between us and Sind ..." (Ind. Doc. A-91, p. 239);
>
> "I am directed to assure you, that the Honourable Company's Government, in adopting the resolution of entering that district [Parkar] has no design of extending its frontier beyond the natural limits of the Runn, which bounds Guzerat and Cutch ..." (Ind. Doc. A-92, pp. 194–5.)

(ii) The events demonstrate that the Rann cannot be controlled unless the same power controls both shores;

(iii) British control over the Rann does not mean control by Kutch;

(iv) Still less can British control over the Rann mean that the Rann became, by that token, converted into Kutch territory;

(v) In the military operations of 1820, which are said to be in defence of Kutch, no Kutch force co-operated, while forces of Radhanpur and Jodhpur co-operated with the British;

(vi) It is said in the letters that after having achieved their purposes, the punitive forces "will retire within the Cutch or Kattywar frontier" which evidently implies that the Rann was considered to be beyond the Kutch frontier.

Returning once more to the same events, India points out that the important thing was that the British, while assuring the Amirs that they did not intend to "extend" their "connections beyond the Rann", did not request the permission of the Amirs to cross the Rann, thereby "implying clearly that the Rann was an area over which the Amirs themselves had no sovereignty or dominion at all".

India says that the absence of Kutch in the employment of the force is of no moment for the reason that Kutch is expressly stated to be one of those allies

whose territories are to be saved from the depredations of the banditti; it does not matter who fought. The reference to the "Cutch or Kattywar frontier" is to the firm land which is within Kutch or Kathiawar where alone the army could retire. To construe the word "barrier" as meaning a dividing entity between States on either side is stretching it beyond what was intended in the context of what was under consideration; what the British said was that it was difficult to put themselves on the other side of the Rann and decided to treat the Rann as a sufficient barrier once the bandits had been driven away. Because of the nature of the Rann communications will be too long, the further the British got away from the mainland, the more difficult it became and hence the Rann was to be treated as a physical impediment.

3. *The Shape of British Rule in India*

British control over India evolved along two lines, in two distinguishable but parallel processes. One was its gradual perfection as a system of administration, with the rights and duties of all its component elements well defined, and the second was the gradual withering away of the power of the East India Company and its substitution by the power of the British Crown.

The main milestones of these processes were, according to the Memorial of India, as follows:

1600. Establishment of the East India Company under the style of "The Governor and Company of Merchants of London Trading into the East Indies" (later modified to "The United Company of Merchants of England Trading to the East Indies").

1661. The Company is given power to seize and send home interlopers, to wage war and conclude peace with non-Christian princes and to appoint Governors to exercise civil and criminal jurisdiction over British settlements in India. Under this authority, Governors are appointed at Fort St. George (Madras) and Bombay, and later at Fort William (Calcutta).

1756. The Court of Directors of the Company sets up a Select (Secret) Committee to deal with political and military matters of the Company.

1773. Regulating Act of the British Parliament constituting a Supreme Government for India with the Governor-General and four Councillors at Fort William, having controlling authority over the Governors of the Presidencies of Fort St. George and Bombay also. This act is the first landmark in the transformation of the Company's Commercial Council into a political apparatus of Government. It lays the foundation of a central administration and institutes a system of parliamentary control. It marks the beginning of the Company's metamorphosis from a trading corporation into a corporation of a new kind, entirely administrative in its object and subordinate to the British Parliament. The private interests of the Company are drastically curtailed.

1784. Pitt's India Act establishing the Board of Control consisting of six Commissioners, one of whom is a Secretary of State; the Commissioners are empowered to superintend, direct and control all acts, operations and concerns which in any way relate to the civil or military government or revenues of the British territorial possessions in the East Indies.

1833. The Government of India Act, under which the Company surrenders all its real and personal property in India (henceforth to be held in trust for the British Crown) and surrenders its commercial privileges as a trading company. The Act reconstitutes the Government of India on a new model which vests the whole civil and military government of the Company's territory in the Governor-General and Councillors, to be styled as "The Governor-General of India-in-Council", with full power and authority to superintend and control the civil and military administration of subordinate Governments.

1858. The Government of India Act completes the process of the transfer of control of the Indian Government from the Company to the Crown. All territory and all powers of the East India Company are vested in the Crown; the Crown and the British Parliament are to exercise their control over Indian affairs through a Secretary of State who is to be a Minister of Cabinet rank and is assisted by a Council. The appointment of the Governor-General of India and the Governors of the Presidencies is to be made by the Crown. Thus ends the career of the East India Company and commences the Government of India by the British Crown directly. The Crown accepts all the Treaties made by the Company with the States and undertakes to maintain them scrupulously.

The Government of India Act, 1935, *i.a.*, creates a separate Province of Sind under a governor and Sind ceases to be a Division of the Bombay Presidency.

1947. British rule comes to an end in August of this year when the Indian Independence Act comes into force. With that Act the British Government relinquishes its sovereignty over all the Indian States. It relieves itself of all obligations under the various Treaties with those States. The States thus reacquire their absolute sovereignty but in course of time they accede to and merge with India or Pakistan.

One aspect of the above outlined evolution was of paramount importance for the present case. It was the relationship between the British and the Indian States.

India, in its Memorial, states, *i.a.*, that even during the times of the East India Company, the Indian sub-continent was studied with a large number of independent sovereign States, big and small; initially the Company adopted a policy of non-involvement and non-intervention in respect of these States; that policy was marked by the desire to confine British interests to trading in and around the territory in which the British possessed settlements; the treaties which the Company then concluded with the States recognised the sovereignty of the rulers and were intended to maintain friendly relations with the States or to obtain privileges from the States. When, however, larger schemes of Empire dawned upon its horizon, the Company commenced involving itself in the internal affairs of the States and sought alliance with them, offering to protect them from external and internal enemies. At this stage, the principle of suzerainty or paramountcy was applied and the Company projected itself as the guardian of the various States. The relations between the Company and the States were regulated by the terms of treaties, which varied almost from State to State; during the later period of the treaty-making activities, the Company insisted that a State should receive its representative and at times also its troops. The more important of the political treaties related to mutual amity and defensive alliance,

providing for territorial integrity, internal sovereignty and protection of States, prohibition of external intercourse and the right of the British Government to advise in certain circumstances. The functions of the representative of the Company were principally to maintain good relations between the State and the Company but he also used to advise and guide the rulers of the States and, under this guise, to control the affairs of the State. The representative of the Company was designated either as the Resident or the Political Agent. The office of the Political Agent in Kutch was abolished only in 1924 in connection with the creation of the Western India States Agency. As from that year, the Agent to the Governor-General governed all the States forming part of this Agency and was the representative of the Government of India in relation to them.

The Government of India Act of 1858 was put into focus by Pakistan in oral argument.

Pakistan started by referring to Ilbert, *The Government of India*, for a detailed chronology of events in India and pointed out that the details given in these tables illustrate the policy of conquest and annexation of the East India Company up to 1858. It was pointed out that Governor-General Lord Dalhousie was the Governor-General of annexations *par excellence*. He was in office from 1848 to 1856. In this last year one of the most venerable States of India, Oudh, was annexed. In the next year, 1857, the armed uprising started which was called by the British the Indian Mutiny but is also referred to as the first war of independence. The end of this uprising, in 1858, was followed by the Government of India Act of the same year, which abolished the East India Company's rule in India. The taking over by the Crown was followed by a Proclamation of Queen Victoria on 1 November 1858. In this Proclamation it was said, *i.a.*:

> "We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted, and will be scrupulously maintained; and We look for the like observance on their part.
>
> "We desire no extension of Our present territorial Possessions; and while We will permit no aggression upon Our Dominions or Our Rights, to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the Rights, Dignity and Honour of Native Princes as Our own; and We desire that they, as well as our Own Subjects should enjoy that Prosperity and that social Advancement which can only be secured by internal Peace and good Government.
>
> "We held Ourselves bound to the Natives of Our Indian Territories by the same obligations of duty which bind Us to all Our other Subjects; and those Obligations, by the Blessing of Almighty God, We shall faithfully and conscientiously fulfil."

Pakistan termed this Proclamation "an historic proclamation" which "announced a new policy, a policy calculated to inspire confidence and under which it was expected that British rule in an acceptable form would remain for some time, or perhaps indefintely ..." (Verbatim Records, p. 2508).

The new policy, thus shortly defined, was viewed by Pakistan from three angles:

(i) The new policy was one of a clearer distinction between two parts of India. Up to this stage there has been no difference of compartment, it is still the same function of administration. You administer one territory or one area directly; you administer another area through a person who has been allowed to retain

some measure of self-government but who does what you tell him to do; you administer a third one through another arrangement where you leave him with self-government but you ask him to pay you something; and so on, each one of them was on the same footing. But now, the two functions begin to get separated, administering the territory that you actually hold and conducting relations with territories which you have not appropriated as sovereign for yourself. So you find a separate department more or less developing or evolving towards a Crown Representative's Department.

A clear definition of the distinction between the two parts of India was provided in the Interpretation Act of 1889:

> "The expression 'British India' shall mean all territories and places within Her Majesty's Dominion which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India.
>
> "The expression 'India' shall mean British India together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India."

(ii) The new policy was one of a clearer definition of the relationship between the Paramount Power and the Indian States. It is from 1858 that rules or usages of dealing with Indian States are to be traced. The actual formal conduct of relations with States takes shape from 1858 onwards.

A short description of these relations were quoted from Ilbert:

> "India, as defined by the Interpretation Act, 1889 ... includes not only the territories comprised in British India, that is to say, the territories under the direct sovereignty of the Crown, but also the territories of the dependent Native States. These are upwards of 600 in number. They cover an area of nearly 700,000 square miles, and contain a population of about 62,500,000. Their total revenues are estimated at nearly Rs.20,000,000. They differ from each other enormously in magnitude and importance. The Nizam of Hyderabad rules over an area of 83,000 square miles and a population of more than 11,000,000. There are petty chiefs in Kathiawar whose territory consists of a few acres.
>
> "... The sovereignty over them is divided between the British Government and the ruler of the Native State in proportions which differ greatly according to history and importance of the several States, and which are regulated partly by treaties punishment without appeal. The minimum of sovereignty is represented by the lord of few acres in Kathiawar who enjoys immunity from British taxation, and exercises some shadow of judicial authority.
>
> "But in the case of every Native State the British Government, as the paramount Power,
>
> "(1) exercises exclusive control over the foreign relations of the State;
>
> "(2) assumes a general, but limited, responsibility for the internal peace of the State;
>
> "(3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and
>
> "(4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order.
>
> "It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of

the British Government on the application of the parties to the dispute. It cannot initiate or maintain diplomatic relations with any foreign Power in Europe, Asia, or elsewhere. It cannot send a diplomatic or consular officer to any foreign State. It cannot receive a diplomatic or consular officer from any foreign State. Any attempt by the ruler of a Native State to infringe these rules would be a breach of the duty he owes to the King-Emperor. Any attempt by a foreign Power to infringe them would be a breach of international law." (Ilbert, *The Government of India,* 3rd Ed., 1915, pp. 165–6.)

Pakistan concludes that a ruler of an Indian State was not independent, but he had some residue and remnant of sovereignty left in him by virtue of which he would exercise jurisdiction over those who were called his subjects. Civil and criminal jurisdiction in most States was exercised by the State itself. The Agent of the British Government did not exercise any civil or criminal jurisdiction in the State except in certain special matters. On the other hand, there were instances where, though technically the definition of an Indian State covered an area, the jurisdictional aspect was so much reduced that there was only a shadow of it left. In such a case it was possible that the actual jurisdiction might be exercised either through an Agent or through a Resident or something of the kind. Nevertheless, anything that is called a State has a certain amount of jurisdiction.

Finally, Ilbert is quoted as stating:

"The result of all these limitations on the powers of the Native Indian States is that, for purposes of international law, they occupy a very special and exceptional position. 'The principles of international law', declared a resolution of the Government of India in 1891, 'have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the sovereignty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter'." (Ilbert, *op. cit.,* p. 169.)

(iii) The new policy was the reverse of the East India Company's policy of annexation. The object of the new policy was to inspire confidence both among the inhabitants of the areas that were British and ruled by the British, and among those whose assistance and help had been taken from time to time and with whom treaties had been made, though they had been allowed to retain some kind of independence, i.e. the Indian Princes.

This particular policy, with reference to the territories of the States, was observed by the Political Departments in India thereafter. That is to say, so far as rulers of States were concerned they were not to be given the impression that any encroachment on what was legitimately theirs would take place. If there were disputed matters they would be settled according to the terms of the settlement. If a thing was too difficult it might be left alone for a time. Pakistan adds:

"... [the] previous trend would have been 'Well, you [Native rulers] are out, we are in'. The present trend would be, 'We will observe what is somebody else's and we will not allow what is ours to be encroached upon. If it is ours we will protect it but we will not go and encroach on others'. This has remained through the British period and is the keynote of the relationships with Indian States." (Verbatim Records, p. 2512.)

Mr. Tupper stated on the new policy that:

"...the Proclamation of 1858 deliberately abjured a policy of annexation in a report to the Native States, and in 1877 an important political occasion was seized to confirm in an emphatic way the confidence of Ruling Chiefs in the intention of the Paramount Power to safeguard their interests." (Tupper, *Indian Political Practice,* Vol. II, 1895, p. 35.)

The occasion referred to by Tupper was the assumption in 1877 by Queen Victoria of the title of Empress of India. The then Viceroy, Lord Lytton, delivered a speech to announce the event and in that speech said, *i.a.*:

> "It is on the gradual and enlightened participation of Her [Majesty's] Indian subjects in the undisturbed exercise of this mild and just authority, and not upon the conquest of weaker States, or the annexation of neighbouring territories, that Her Majesty relies for the development of Her Indian Empire." (*ibid.*)

Tupper further mentions the so-called Adoption Sanads of 1862, i.e. documents delivered by the Government to Indian rulers in which they were assured that they were masters of the succession to their thrones. In a typical Sanad, it was said that

> "...on failure of natural heirs, the British Government will recognise and confirm any adoption of a successor made by yourself or by any future Chief of your State that may be in accordance with Hindu Law and the customs of your race." (*ibid.*)

Lord Canning, the Viceroy, wrote to the Secretary of State for India, Sir Charles Wood, that the sense of these Sanads was to show

> "...at once, and for ever, that we are not lying in wait for opportunities of absorbing territory, and that we do deliberately desire to keep alive a feudal aristocracy where one still exists..." (*ibid.*)

Counsel for Pakistan concluded that the emphasis of this policy was on the confidence of the ruling Chiefs which should be strengthened. By putting them under obligations, British power would then be reinforced and strengthened through them. Therefore, their confidence should not be allowed to be shaken in any way.

In the light of this thesis a particular instance, reported by Tupper, was dealt with by Pakistan. The instance, as presented by Tupper, was the following:

> "The question of making some sort of discrimination in the case of certain territories arose again a few years later on the occasion of some discrepancies in statistics being discovered by the India Office. In 1877 the Government of India forwarded to the Secretary of State a memorandum showing the approximate area and population of the Native States, and in January 1878 the Secretary of State sent to India a memorandum prepared in the India Office which pointed out, amongst other discrepancies, that the Government of India had treated Kuch Behar, Hill Tippera, and the Orissa and Chota Nagpur Mahals as Native States, whereas they were treated as British territory in the Bengal Administration Report. The Bengal Government was requested to report, and sent in an elaborate review of the circumstances of these territories. The Foreign Department gave no confident opinion regarding the Chota Nagpur Mahals, but for the rest advised that the territories should, for statistical purposes, be treated as not being British territory." (Tupper, *op. cit.*, Vol. I, p. 232.)

Pakistan points out that this instance and other similar cases reported by Tupper are not an exact parallel with the case of the Rann of Kutch being mentioned as a part of the Indian State of Kutch in Official Administration Reports or official statistics. Nevertheless, for the purposes of the policy the statements made there do cover the present case as well.

The British had concluded certain treaties with their Indian rulers but had also expressly extended several British laws to them. The question arose: is such a territory a part of British India or a part of India of the Princes? Dealing with the cases, Tupper connects them with the question of a particular category of territories which were first called "non-regulation areas", Later "scheduled

districts" and were finally included in the large definition of "tribal areas". This category had been occupied and controlled by the British but they were not such that British laws automatically extended to them.

Tupper writes:

> "Now, one question which deserves particular consideration ... is, how do we discriminate between Scheduled Districts and State territory? It may be said of Native States as of some of the Scheduled Districts, that they have never been brought within the operation of our general laws; and of some Native States that nevertheless some law of ours ... has been actually applied to them ... The reply to the question just put is that Scheduled Districts are and Native States are not parts of British India; and that the discrimination is effected – not by any process of legislation but – by decisions of the executive Government in its political capacity ... Mr. Aitchison, the Foreign Secretary, pointed out that to include territory in the schedule was virtually to assert that it was part of British India, and that if tracts held by chieftains on various tenures hitherto dealt with in the Political Department were so included, the suspicions allayed by the non-annexation policy of Lord Canning might be again aroused. Mr Aitchison proposed that every district should be erased from schedule in respect to which there was any reasonable doubt as to whether it was British territory or not." (Tupper, *op. cit.*, Vol. I, p. 231; Verbatim Records, pp. 4661–2.)

The inference drawn from the above by Pakistan is that for statistical purposes, unless a matter was settled, the policy not to disturb that which had been put down somewhere, particularly if the suspicions of the Indian ruler were likely to be aroused or confidence undermined. This was the general policy. For purposes of statistics, therefore, and for statistical matters in Administration Reports, the policy of the British may be summed up in these terms: if there is any lack of clarity regarding a matter which affects an Indian State, let the statistics go as they are and remain as they are without disturbing them so as to undermine the confidence of an Indian State or its ruler. Statistics do not affect the status of a territory. Pakistan continues: The context here was different. The analogy was not there, nobody here was asking the question whether the territory of the Rao of Kutch should be regarded as British or as State territory. It was a settled issue, the territory of the Rao of Kutch was State territory. But the question was, is this a part of the Rao's territory? When this question, the question of the Kutch-Sind border, was brought before the Bombay Government in 1885 and this Government issued a Resolution, this Resolution was a different, though indirect, manifestation of the same policy: "Do not raise a question which can be avoided. It is an intricate question anyhow. Leave matters alone. Let sleeping dogs lie. If the matter gets forced, well, naturally a decision will be taken, but unless the matter is forced, do not do anything to disturb it."

Pakistan also places reliance on Pakistan Documents B.349 to B.352 which relate to the Kutch-Morvi-Wankaner disputes, as an illustration of the British reluctance to force any boundary issue, while maintaing the *status quo*, and to overrule any party as long as this did not result in loss to either party. Pakistan contends that the British followed a declared policy of not taking any step that might be capable of being taken as overrulling prejudicing or otherwise jeopardising the claim of a vassal, before the claim had been duly entertained and decided. Omissions to contradict assertions of a claim by a vassal did not, therefore, mean an acceptance of that claim.

As regards Pakistan Documents B.349 to B.352 relating to the Kutch-Morvi-Wankaner dispute, India says that these documents relate to a dispute between

two Indian States *inter se* and the question was whether Britain would appoint someone to determine it and what should be done about it. "The tendency is to say that unless anything really serious occurs by reason of this, or unless both the Parties agree, I do not see why we should do anything. We are not going to interfere." This is given as an example of the permanent attitude of the British and it has no relevance. In the question before the Tribunal, the position is that Britain has not merely said "We will not interfere" or "We will not say anything until it comes to a head", but it has itself constantly repeated in writing, in reports and in maps, that the Rann does belong to Kutch. This puts the case on an entirely different footing from a situation where two Indian States are concerned.

In its reply India deals with Queen Victoria's Proclamation to the effect that there was no desire to annex any property or to say anything which would alarm the Indian States in any way and to Pakistan's reference, on that basis – though it stated that what is referred to has no direct bearing but is, as it were, an analogy or an example – to certain statistical tables and references in statistics to scheduled areas, areas to which British laws were extended or not extended, as the case may be; Pakistan said that if there was any doubt whether a particular area was of that kind then it was to be left out of the statistical tables, because its inclusion would be tantamount to saying, or might be construed to mean, that it was British territory and "We do not want that because if there is a contention or a doubt it is better policy to leave it out rather than to include it", with the inference which may be drawn.

In India's view, the argument based on these elements is far-fetched. It is one thing to say that for a certain purpose, which is the application or the extension of British laws to a territory, if there is any doubt, the territory in question should be left out of a table or schedule, but this is a far cry from including positively in the statistical tables a statement that certain territory belongs to an Indian State. It is one thing to say "I will not mention it", because it might be construed as belonging to the British. There is a contention, there is a doubt. Leave it out. It is another thing to say "I will positively show it in the statistics as belonging to an Indian State", because the whole idea is that where there is a doubt the matter is to be left, because it may be resolved in some way at some other time, or some decision may be finally arrived at. In one case, you do not state, either expressly or by implication, that it is British territory because you apply your laws to it. It is a very different proposition when at the highest level it is in terms stated that the territory of Kutch amounts to a particular area and includes the Rann. Surely, assuming that the policy was "You are not to frighten the Indian States by claiming something which may belong to an Indian State or which is being administered by the State or which is within some kind of sovereignty or influence of the State by saying 'No, this is ours'," so you do not say anything about it, you do not go out of your way and say to the Indian State "I am so frightened of my Queen, who has laid a certain injunction upon me, that although I know that this territory belongs to Sind and to British India I am going to declare publicly, including declaring to the Indian State itself" (because these are all available figures) "that it belongs to you". Is that a logical outcome of the supposed policy?

In any event what happened in Kuch Behar and somewhere else is, if at all, only an analogy in this sense: that there a particular attitude was taken in regard to certain statements of a particular kind, because it was said that to do otherwise might be contrary to a particular policy. What is the relevance of that particular withholding of a statement, the non-making of an assertion, to a case where you make positive assertions to the effect that "This territory is not British but does belong to an Indian State?"

India stresses that certain statements relied upon by Pakistan to the effect that the territory of Sind extended to the middle of the Rann emanated from subordinate officials. Similar statements respecting the extension of jurisdiction by Sind authorities over half the Rann also were of such origin. Both may be explained by a natural inclination on the part of such officials to increase the territory under their jurisdiction. Pakistan denies that any such motivation can be imputed to the officials in question and observes:

> "...it is perfectly clear that the British regarded this Rann, not as an asset but more as a liability. They treated whatever they had to do there more as a sufferance of a hardship than as an enjoyment of a possession. In any case, the Rann is not a coveted piece of territory which would have added to the glory of the Empire. The question that any such motive could be behind it really does not arise." (Verbatim Records, p. 18131.)

Counsel for India concludes:

> "The real question for the members of the Tribunal to consider is whether these documents which I have mentioned, and the events as they occurred with reference to the statistical reports and the statement... to be laid before the Houses of Parliament, are to be discounted and given no weight whatsoever, as being a statement of convenience only, attributable to a policy and wrongly made, knowing, it to be incorrect, because of the policy of Queen Victoria's Proclamation." (Verbatim Records, p. 10548.)

4. *The End of British Rule in India*

In 1947, the British Parliament enacted the Indian Independence Act which set up, with effect from 15 August 1947, two independent Dominions, known as India and Pakistan.

In the Indian Memorial it was stressed in this connection that the territory allotted to Pakistan was specified in sub-section (2) of Section 2 of that Act and all the remaining territory of India except the Indian States was allotted to India. The territory allotted to Pakistan included the Province of Sind, as it was on the date of the passing of that Act, i.e. on 18 July 1947. In the course of time, Sind was incorporated in West Pakistan. Under Section 7 of the Act, the suzerainty of the British Crown over the Indian States lapsed, and, with it, all Treaties and Agreements in force between the British Government and the rulers of Indian States, at the time of passing of the Act. Thereby the States reacquired their absolute sovereignty. Subsequently all the Indian States acceded to India or to Pakistan and later the States having acceded to India merged with India and the States having acceded to Pakistan merged with Pakistan.

India asserts that the whole of the territory of India except the Indian States was partitioned between the two dominions by the Indian Independence Act and that thus the whole of the territory of former India, except the territory

allotted to Pakistan and except the Indian States which merged with Pakistan, came to belong to India.

Pakistan replies that before 15 August 1947 the territory of India as defined in sub-section (1) of Section 311 of the Government of India Act, 1935, consisted of British India, Indian States and tribal areas, i.e. areas that were neither British India nor Indian States. The Indian Independence Act divided between India and Pakistan the territory of British India only and not also the tribal areas. Pakistan therefore denies the assertion of India that the whole of the territory of India except the Indian States was partitioned between the two Dominions and that the whole of the territory of former India except the territory allotted to Pakistan and except the Indian States which merged with Pakistan came to belong to India.

Pakistan agrees that under Section 7 of the Indian Independence Act, the suzerainty of the British Crown over the Indian States lapsed and with it all the Treaties in force at the time of the passing of the Act. Pakistan also agrees that the territory allotted to Pakistan included the Province of Sind as it was on 18 July 1947 and contends that Sind in 1947 was what it was in 1843.

At the oral hearings, India agreed with Pakistan that the Indian Independence Act divided British India only but it adhered to its statement that the whole of the territory, except the territory allotted to Pakistan and the Indian States which acceded to Pakistan, became in due course the territory of India. It pointed out that it was no one's case that there was any tribal area in the region in dispute.

Pakistan points out that India consisted before partition, in addition to British India and the Indian States, of areas which did not form part of either British India or of an Indian State, namely, tribal areas and areas of an undefined status, which were not allotted to either India or Pakistan; but it also states that it is not the case of Pakistan that the disputed region belongs to these categories. Pakistan states further that though Pakistan has only one case, namely, that Sind extended to the middle of the Rann, it was possible that the Tribunal might find that the Rann belonged neither to British India (Sind) nor to an Indian State (Kutch). In such an eventuality, the Rann would have the status of an undefined area and the Independence Act of 1947 would not operate upon it directly. However, since there is no third party in the dispute, a conterminous Indo-Pakistan boundary would have to be determined by the Tribunal on the basis of rules and principles applicable in the circumstances. Pakistan further argues that India cannot claim title to any of the disputed area unless it shows that such area was a Kutch on the day India legitimately became a successor of Kutch, namely, the date of the merger of Kutch with India, 4 May 1948. Between 15 August 1947 and 4 May 1948, Pakistan in its own right exercised solo jurisdiction in the claimed part of the Rann which is an independent source of title for Pakistan.

Both Parties agree that on the lapse of suzerainty, the Indian States became independent. Section 6 of the Government of India Act, 1935, as adapted after the passing of the Indian Independence Act, laid down the procedure for accession of the Indian States to either India or Pakistan.

The Indian States abutting upon the Great Rann on 15 August 1947 (except

Kutch) acceded to and merged with India on the following dates:

Name of State	*Date of Accession*	*Date of Merger*
Jodhpur	16.8.1947	26.1.1950
Wav	5.11.1947	10.6.1948
Suigam	15.8.1947	10.6.1948
Tharad	15.8.1947	10.6.1948
Santalpur	15.8.1947	10.6.1948

Pakistan adds that in case the accession is defective the date of merger would be decisive.

As to Kutch, India states that it acceded to the Dominion of India "almost immediately" after it became an independant State and completely merged with India on 4 May 1948. It also states that Kutch acceded to India on 16 August 1947.

Pakistan states that Kutch acceded to India on 4 May 1948 and not before or immediately after the Indian Independence Act came into force.

India produces the Instrument of Accession of Kutch (Ind. Doc. AAA-1), and the Agreement of Merger of Kutch (Ind. Doc. AAA-2). The Kutch Instrument of Accession is executed on 11 August 1947 and is signed by "Heir Apparent, Kutch State for and on behalf of" the Maharao of Kutch. The Instrument was accepted by the Governor-General of India on 16 August 1947.

On seeing the Kutch Instrument of Accession, Pakistan withdrew its statement that Kutch acceded to India on 4 May 1948, which, it said, was based on a statement made in a publication of the Indian Society of International Law. Pakistan, however, contests the validity of the Kutch Instrument of Accession on the following grounds:

(i) The Government of India Act, 1935, as it stood on 11 August 1947, the date of execution of the Instrument of Accession, required that the Instrument be signed by the ruler himself, otherwise it would be invalid, the Instrument of Accession, as executed on 11 August 1947 by the Heir Apparent, is therefore invalid;

(ii) The amended Section 6 of the Government of India Act (Ind. Doc. CCC-1) makes it possible for a person who is exercising the powers of a State also to execute the Instrument of Accession and it may therefore qualify the Heir Apparent, provided he can be shown to be a person who was exercising those powers; but India has made no attempt to show that those conditions are fulfilled in the case of the Heir Apparent.

(iii) Said Section related to accession to the Federation of India but the Federation had not been formed and the Instrument of Accession, could not, therefore, take effect;

(iv) The amended Section does not contain any provision for bringing to life something that was born dead. It does not say that by being accepted by the Governor-General an invalid Instrument of Accession will become a valid one;

(v) Sub-section (6) of Section 6 of the Adapted Government of India Act requires that copies of the Instrument of Accession and of the Governor-General's acceptance "shall be laid" before the Dominion Legislature. This is a

mandatory requirement and no pleading or proof has been offered that this condition was fulfilled.

India filed an affidavit (Ind. Doc. TA-8) made by the present Maharao of Kutch who executed the Instrument of Accession as Heir Apparent on 11 August 1947. He states as follows: His father, then Maharao of Kutch, proceeded to England for treatment in July 1947. It was known at that time that from 15 August 1947 India would be divided into the Dominion of India and Pakistan and that the suzerainty of the British Government over the Indian States would lapse. The Maharao was considering the action to be taken by him in regard to the future of the State and he was in favour of acceding to India but when he left for England he had not taken any firm and final decision. As it was expected that he would be away from India for a long time for treatment, he issued an order on 21 July 1947 that the Heir Apparent should carry on the administration of the State during his absence from India (the original order is appended to the Affidavit). Soon after the Maharao proceeded to England, the question whether Kutch should accede to either Dominion or not became urgent and the Heir Apparent sent a telegram to the Maharao to ascertain his wishes and the Maharao replied that Kutch should accede to India and also authorised the Heir Apparent to execute the Instrument of Accession. Accordingly, after the discussions with the Minister for States of the Government of India and the concerned senior officers of the Government of India, the Heir Apparent executed the Instrument of Accession in duplicate. Later one copy of the Instrument of Accession with an endorsement of acceptance by the Governor-General was returned to him.

India states that the Instrument of Accession was thus executed and signed by a competent and authorised person. India produces the *Constituent Assembly of India (Legislative) Debates*, Vol. I of 1947 (Ind. Doc. TC-11) which show that several Instruments of Accession by Indian States and the Governor-General's acceptance thereof, including that relating to Kutch, were laid before the Dominion Legislature. India argues that, though the Instrument of Accession was executed on 11 August 1947, it was accepted by the Governor-General. In any event, India states, an Instrument may have been signed in anticipation but on 15 August 1947, on the relevant date when the person who signed it had, in law, the right status for the purpose of signing, that document must be deemed to have been a valid document which the Governor-General had to accept.

In its rejoinder, Pakistan reiterated that the claim of accession of Kutch to India on 11 August 1947 was invalid and the date of its merger with India, 4 May 1948, is the effective date of accession.

The importance of the creation of the Dominion of India and Pakistan by the Indian Independence Act is described by India in the Memorial thus: The territory allotted to Pakistan included the Province of Sind as it was on the date of the passing of that Act, i.e. 18 July 1947 and the Province of Sind so delimited became later part of West Pakistan. The question which arises for determination in the light of this position is whether on 18 July 1947 the territory of the

Province of Sind extended down to the 24th parallel, as claimed by Pakistan, or ran roughly along the northern edge of the Rann of Kutch, as claimed by India.

In its Counter-Memorial, Pakistan admitted that the territory allotted to Pakistan under the Indian Independence Act included the Province of Sind as it was on 18 July 1947 but said that the border of Sind in the disputed region was well known but had not been accurately determined and that this border runs as shown in the Claim Map of Pakistan and it was this border that became the boundary of West Pakistan in due course.

In oral argument, India reiterated that what has to be ascertained is what was included in the Province of Sind on 18 July 1947 and contended that the territory of Sind was well defined at that time. The Province of Sind was what was originally known as the Sind Division of the Bombay Presidency and the limits of that Division and subsequently the limits of the Province of Sind were well defined.

Pakistan said that the northern half of the Rann, "the upper lands" and "the delta lands" were part of Sind on the relevant date.

The question of the validity of the Kutch Instrument of Accession assumed importance as Pakistan stated that, if the Instrument of Accession were invalid, Kutch must be deemed to have acceded to India by its Merger Agreement on 4 May 1948, which would be the relevant date on which the territory of Kutch is to be determined. It further said that India would then acquire from Kutch only that which Kutch ultimately had on the date of its merger with India. No claim of Kutch could survive the independent exercise of jurisdiction by Pakistan over the disputed area and would not in any case be alive on 4 May 1948 to be acquired by India.

CHAPTER IV: BOUNDARIES WITHIN INDIA UNDER BRITISH RULE

It was never questioned that both India and Pakistan were successor States, in view of their legal origin as independent States in the Indian Independence Act of 1947. In the area under consideration Pakistan succeeded Great Britain as sovereign over Sind as a Province of British India. India succeeded the British vassal States of Kutch, Jodhpur, Wav, Suigam, Tharad and Santalpur. Except for Jodhpur, these were traditionally parts of Gujarat.

This uncontested fact has several logical consequences of importance for the case.

The first to be mentioned was that the two successor States inherited their predecessors' territory as it was at the time of their succession, within boundaries as they existed at those dates – those dates thus becoming the "relevant dates" in the present boundary issue.

This logical consequence is also not controversial. Both initial Memorials contain the same position on this matter.

In the Indian Memorial it was said:

> "In the light of this constitutional history and having regard to the claims of the Government of India and the Government of Pakistan and in view of the fact that the former Province of Sind adjoins Gujarat to its north in the Gujarat–West Pakistan border area, the question which the Tribunal has to determine will be whether on 18 July 1947 the territory of the former Province of Sind extended on the south roughly down to the 24th Parallel or ran along the northern edge of the Rann of Kutch." (Indian Memorial, para. 17.)

Pakistan submitted that under the Indian Independence Act, the British Indian Province of Sind, as it was on 18 July 1947, became a part of Pakistan. The relevant date for determining the extent of the Province of Sind, namely 18 July 1947, is the date of the passing of the Indian Independence Act by the British Parliament.

Pakistan adds that the date on which India succeeded to Kutch was 4 May 1948 when Kutch merged with India. India maintains that the date of its succession to Kutch was 16 August 1947, when the Governor-General of India accepted the Instrument of Accession of Kutch. Pakistan contends that for certain technical reasons that Instrument is invalid. Pakistan argues that Kutch territory in the disputed region, on the day when India succeeded to Kutch, was no greater than it was in 1819, when Kutch became a vassal of the British. According to Pakistan, the critical date for determining the limits of Kutch, therefore, is 1819. Pakistan submits that Sind and Kutch limits meets in the disputed region where Kutch limits lay in 1819, because the territory of Sind in the disputed region on 18 July 1947 was no less than at the time of its conquest by the British in 1843, which in turn was no less than in 1819, after which date Kutch, admittedly, did not acquire any territory in the disputed region and

could not acquire any further territory, except through the intervention of the British.

India submits that the Province of Sind, which was included in Pakistan and which adjoins Gujarat, extended up to the northern edge of the Rann of Kutch and, since Sind and Kutch were conterminous, the entire territory to the south of the northern edge of the Rann of Kutch is a part of India. As regards the accession of Kutch to India, India maintains that Kutch executed an Instrument of Accession which was accepted by the Governor-General on 16 August 1947 and that Kutch became a part of India on that date.

Counsel for India, when analysing the Indian Independence Act of 1947, was also very clear on the importance of the date. He said, *i.a.*: "The date of the passing of this Act – 18 July 1947 – that is the relevant date, and what has to be ascertained is, what was it that was included in the Province of Sind on that date? That is all that goes to Pakistan ... My contention before you, Sirs, will be that on the relevant date, 18 July 1947, the territory which is called here the Province of Sind was well defined." (Verbatim Records, p. 52.)

The next logical consequence of the fact of succession is this: the boundaries – being boundaries of former parts of the British Indian Empire – were as inherited from the Paramount Power.

To clarify the positions of the Parties on this aspect of the case, the Tribunal asked the following question:

> "Are decisions or admissions of the Paramount Power (Great Britain) with respect to boundaries, made in conformity with legislation and custom prevailing at the time, binding upon the Parties to this dispute?"

The Parties submitted the following answers in writing:

> India: "Decisions of the Paramount Power functioning through the Secretary of State, the Government of India or the Government of the Province concerned, with respect to boundaries, are binding upon the Parties to this dispute. Such decisions were made in the exercise of the powers of Paramountcy; there was no other custom nor was there any legislative provision regulating such decisions nor was there any uniformity in the mode of expression of such decisions. Admissions made by the Paramount Power functioning through the Secretary of State, the Government of India or the Government of the Province concerned, with respect to boundaries, are binding on the Parties to this dispute."

> Pakistan: "Decisions of the Paramount Power, with respect to boundaries, competently made in conformity with law are binding on the parties to this dispute. In view of the relationship of the Paramount Power with its vassal states, the question of an admission by the Paramount Power does not arise. The level at which the Paramount Power could determine the question of boundaries so as to transfer territory that might have been British, to a vassal state, was the Sovereign in Parliament, but in view of the peculiar history of the territory that was originally held by the East India Company, the Crown, i.e. the Sovereign acting through the Secretary of State for India, without the intervention of Parliament, had continued to do so. This may be regarded as a deviation from the law by custom. No decision as to boundaries, made by any authority in India, if it had the effect of transferring territory that might have been British, to non-British hands, was valid. Minor adjustments in boundaries, however, were sometimes allowed to be made by the Governor-General in Council, without reference to the Secretary of State for India. This again may be regarded as a custom. The custom was confined to adjustments that were indeed minor."

To elucidate the question further the Tribunal asked the following additional questions:

"During the period of British Paramountcy, which statutory enactments or other rules governed the question of boundaries between States, Provinces (Divisions), and States and Provinces? How were the boundaries under such legislation to be defined, and by whom? Who had the authority to solve boundary disputes or to rectify or modify a boundary and which was the procedure?"

The Parties submitted the following written replies to this question:

India: "During the period of the British Paramountcy, there was no statutory enactment governing the question of boundaries between Indian States *inter se*. The Treaties of the British Government with Indian States generally provided that any dispute between the Indian States concerned and the other Indian States was to be submitted for adjustment to arbitration of the British Government (e.g., Article 13 of the Treaty with Kutch, 1819).

"Even apart from such provisions, Paramountcy implied that the boundary question between States *inter se* could be settled by the British Government. There was no fixed procedure for settlement of such questions, although in regard to certain Indian States some rules were framed (*vide* paragraphs 270, 271 and 271 A of Tupper, Volume II). Sometimes a Boundary Officer was appointed, while at times the Political Agents concerned were called upon to investigate into the questions and the recommendations of the Boundary Officer or of the Political Agent, as the case may be, were considered either by the Government of the Province concerned or by the Government of India; sometimes the Government itself examined the question.

"As regards the question of boundaries between Indian States and Provinces, there was no legislative enactment nor were there any rules generally applicable to the question. However, in the case of Punjab and certain Indian States rules appear to have been framed by the Governor-General (see Tupper, Vol. II, para. 270). The Government of India or the Government of the Province concerned was the authority to accept or recognise, rectify or modify a boundary between a Province and an Indian State or to solve a dispute relating to such a boundary. There was no fixed procedure for settlement of such questions. It was not at all necessary or essential to refer any such question to the Secretary of State and the decisions of the Government of India or the Government of the Province concerned were treated as final and valid. However, sometimes a reference was made to the Secretary of State for his approval or confirmation. There existed legislative provisions for defining or altering the boundaries of the various Provinces *inter se* and the other administrative units in the British India. Reference to these provisions has been made in Pakistan's answer to the question and may not be repeated."

Pakistan: "The period of British Paramountcy is divisible into three parts – 1st, the period of the East India Company prior to Regulation by Parliament. This ended in 1773. 2nd, the period of the East India Company, as regulated by Parliament. This ended in 1858. 3rd, the period of direct rule by the Crown. This came to an end in 1947. During none of these periods was there any statutory enactment governing the question of boundaries between the Indian States and British Territory. The power to fix boundaries of Indian States vested in the Paramount Power as a result of the treaties with those states, and in consequence of the implications of the doctrine of Paramountcy itself. The powers conferred by statute as to boundaries, related to the alteration of boundaries of the various administrative units into which the British territory was divided from time to time. A list of such statutory enactments is given below:

Government of India Act, 1800

Section I. Court of Directors authorised to declare and appoint the part or parts of territorial acquisitions that were under the respective presidencies of Bengal, Bombay, Madras, etc.

Government of India Act, 1853

Section XVII. Power to create Presidencies.

Section XVIII. Power to alter from time to time the limits.

The Indian Councils Act, 1861

Section 46. Power of Governor-General to constitute new Provinces.

Section 47. Power of Governor-General to alter boundaries.

Government of India Act, 1866

Sections 4/5. Power of Governor-General to appoint territorial limits of Presidencies, etc. by proclamation.

Government of India Act, 1915

Section 60. Governor-General may declare and alter the boundaries of any Province.

Section 62. – do. – regarding the Presidency towns.

Government of India Act, 1924

Section 60. Power to declare and alter boundaries of Provinces.

Section 62. – do. – for Presidency towns.

Government of India Act, 1935

Section 290. Creation of new Provinces or alteration of boundaries by His Majesty's Order in Council.

"Prior to the Act of 1935, the boundaries of the administrative units of British India, at the level of the Presidency or Province could be affected only by the Governor-General, in certain periods, subject to prior approval of the authorities, and in still others subject to disallowance by those authorities. Under the Act of 1935, the boundaries of the Provinces could be altered only by the Crown by an order in Council.

"The southern boundary of Sind abutting on the Great Rann was never determined and never notified. The absence of notification, however, did not prejudice the jurisdiction of the Commissioner in Sind.

"Determination of the boundaries of states was regulated by a set of rules. (Tupper, Vol. II, paras. 242, 270, 271, 271 A; also Vol. IV, para. 271 B, p. 38.)

"The Paramount Power alone was competent to settle the boundaries of states and to solve boundary disputes. (Tupper, Vol. II, para. 351.)

"At all times, all decisions relating to boundaries had to be formally made and publicly declared by an official notification. Boundaries could not be altered by inferences or implications."

Much ground was covered by the above-quoted answers of the two Parties to the Tribunal's questions. Some points were, nevertheless, discussed because they were to some degree controversial.

Such was the point emphasised by Pakistan in the very last paragraph of its answer, the point concerning notifications.

The reading of this paragraph provoked an exchange of oral questions and answers between the Tribunal and the two Parties. Counsel for Pakistan stated, *i.a.*:

(i) "I am not aware of any general rule applying to all boundaries... but at each level, whatever boundary... there was a notification at the competent level regarding that boundary." (Verbatim Records, p. 9097.)

(ii) "So far as Provinces are concerned, the boundaries were always notified... the provision for notification is there in the Constitution Acts. You cannot have a Province without a notification." (Verbatim Records, p. 9097.)

(iii) Upon the conquest of Sind, the Governor-General of India issued a "notification" wherein it was stated that "victory [had] placed at the disposal of the British Government the country on both banks of the Indus from Sukkur to the sea..." (Notification dated 5 March 1843). There was no definition of the boundaries except in a general way. What is relevant, however, is that, on this day, whatever the Amirs had became British.

(iv) In 1843 there was no immediate notification of the boundary of Sind.

(v) Later on the boundaries of Sind to the east and to the west were notified, but not the one to the south. The absence of notification was mentioned in a telegram from

the Governor-General of India to the Secretary of State for India, and it was said that it had not prejudiced the exercise of jurisdiction by the Commissioner in Sind. On other occasions also, when a notification as to the southern boundary of Sind was looked for, none was found.

(vi) In the case of new acquisitions of whole units (by the British) there was no practice of defining the boundaries by notification.

Counsel for India stated on the question of notifications:

(i) "I am not aware of... and I do not know of notifications of any boundaries of Divisions. Nor indeed are there notifications to my knowledge."

(ii) "... there is no notification defining the boundaries of the Bombay Presidency."

(iii) "There are notifications in regard to districts even in the Presidency, but these are for the purposes of the Land Revenue Act... which deals with assessment, collection of revenue... land records of fields, ownership... They too do not define a district by a boundary... Those notifications would be that district X shall consist of the following talukas: A, B, C, D. The taluka notification would say that taluka X consists of the following villages."

(iv) "... if any change is made it would be simply that the following villages, A, B and C, are transferred from this taluka to the other taluka."

(v) "... so far as a definition of Sind with a rectified boundary is concerned, there was none, nor was there any original notification to be rectified." (Verbatim Records, pp. 11672–4.)

Another point at issue related to cession of Crown territory to Indian States.

This point was raised by Pakistan and its Counsel defined the question by first quoting Tupper where this author says:

"Just as the Paramount Power is the authority which can determine what is State territory and what is that of British India, so the same Power is likewise the only authority by which cessions of British Indian territory can be made to Native States, by which questions of sovereignty can be decided as between one State and another, and by which boundaries can be fixed between two or more States or between a Native State and British territory." (Tupper, *Indian Political Practice*, Vol. II, Chapter 8, para. 241.)

Tupper was further quoted when he reports the correspondence between the Government of India and the Secretary of State for India in 1886 on the same matter. In a dispatch the Government asked the Secretary to give his opinion "on the subject of the procedure which should be followed in making cessions of British Indian territory". The Government expressed the opinion that:

"... on principle... no cession of the territory of our Indian possessions should be effected without the previous approval and sanction of the Secretary of State for India acting on behalf of Her Majesty's Government. This course has during recent years been followed in all important cases, and we think that, for the future, it should be invariably pursued. But there are cases, of not infrequent occurrence, in which it seems to us doubtful whether a reference to the Secretary of State is essential. These cases arise mainly in connection with a revision of boundaries between British India and Native States, and either relate to the delimitation of a previously doubtful or disputed border, or carry out some comparatively trifling re-adjustment of frontier for purposes of administrative convenience. In the class of cases to which we refer the transfers of territory on either side are unimportant, and have hitherto been usually effected without obtaining the orders of Her Majesty's Government. We think that, in similar circumstances, this practice may still be safely followed, the matter being treated as a modification or revision of boundaries, and not, which it strictly is, as a formal grant of British territory." (Tupper, *op. cit.*, para 249.)

And the Secretary of State for India replied:

"Having considered in Council the letter of Your Excellency in Council... regarding

the procedure to be followed by the Government of India in making cessions of British Indian Territory, I concur generally in the conclusions at which you have arrived, and I approve of the course which it is proposed to adopt in future, as indicated in ... your letter." (*ibid.*)

Counsel for Pakistan concluded that if it was a matter of cession, previous approval had invariably to be obtained. If, however, a trifling adjustment of boundary was made, then the Governor-General – but no official subordinate to the Governor-General, nor the Government of Bombay – without prior reference to the Secretary of State, might do so. Subsequent approval would then be given. The meaning of this was that in all cases the Secretary of State had to give approval.

Pakistan summarised this aspect of the question by stating that the level at which the Paramount Power could determine the question of boundaries, so as to transfer territory which might have been British to a vassal State, was the Sovereign in Parliament. But in view of the peculiar history of the territory which was originally held by the East India Company, the Crown – that is the Sovereign acting through the Secretary of State for India without the intervention of Parliament had continued to do so. This may be regarded as "custom". There was no other custom. The strict theory of the British Constitution is that British territory cannot be alienated except through the intervention of Parliament. The King in Council, the Sovereign in Council, the Executive, cannot do so; it must be Parliament, i.e. the King, the House of Lords, and the House of Commons – the King in Parliament must be the level for alienating British territory.

On another occasion, Counsel for Pakistan returned to the same question and said:

"As I submitted, actually it is for the Crown in Parliament, not for the Secretary of State to transfer British territory to non-British hands. That is the clear constitutional position of the constitutional law of England. But eben if one were to assume that the customary departure from the law were permissible, then the customary departure only went so far that the Crown in Council – that is without the intervention of Parliament – acting through the Secretary of State, may do so." (Verbatim Records, p. 9217.)

Replying to the above statements of Pakistan, Counsel for India, referring to the first passage of Tupper quoted by Pakistan, stated:

"I take no exception to that statement at all. When it requires fixing it is the Power that fixes; when it requires determination, it is the Power that determines. But if the Paramount Power itself says, 'This is my boundary', what requires to be fixed? Nothing. The submission made here is a wrong application of the passage cited from Tupper. All that Tupper said was that the suzerain – the Paramount Power – is the only one to make a cession. There is no question of any cession of territory. As between one State and another in any dispute – yes, it is the power to fix a boundary when it is required to be fixed. I do not dispute that, whether it be between States or between a native State in itself. No question of fixation ever arose except by way of rectification in 1914." (Verbatim Records, pp. 10828/30–32.)

To make India's position still clearer, Counsel for India illustrated the above definition with the circumstances of the 1914 instance by saying:

"As it is, it is true that on the one side there is a Paramount Power and on the other side a vassal State – I am using that term for convenience – and the vassal State says, 'There is this territory; you have occupied it; I have taken no objection up to now but so far as I am concerned I say this is the boundary.' The Paramount Power looks into the matter. It could say, 'No, I refuse to recognise your claim' and it might very well be

that the Rao would be helpless. He could not do anything more. Or the Paramount Power could have said, 'There is something in your claim but I do not want to decide it. Let us refer it to arbitration.' That was a possibility. That was in fact the suggestion made in 1914... One of the things suggested was a commission of enquiry, or a commission. Or the Paramount Power could have said, 'I will look into it myself. I recognise that I have overstepped the limit of the boundary in this particular respect. I have trespassed on territory which is yours. I will therefore withdraw from it and leave it to you again.' There is no transfer. There is no question of cession – nothing of that kind. It is territory which really was never Sind territory to start with. That is the position." (Verbatim Records, p. 10826.)

India's position was re-emphasised on yet another occasion when Counsel for India said:

"...on the compromise being arrived at in 1914 a particular area is 'surrendered' – that is the word used. Now I say that it is a right word. What it means is, 'I have something wrongly; I give it up'... there never was the position that British territory was being ceded or being transferred ... In fact, one of the documents implies that surrendering a part was much more advantageous to the British than letting it go to formal arbitration, that more was obtained by this compromise than would otherwise have been obtained. Well they were experienced people, they were not fools; they were not going to give up an inch of British territory if it was admittedly British ... In this case evidence was put before them on both sides and they came to the conclusion, on the evidence or on the basis of whatever material was with them, that they were wrongly in occupation of this part. And they said: we will compromise and give up a part if he will accept it. And the Maharao said: all right, I will accept that as a compromise. But the basis was that it was territory which was illegally occupied and therefore had to be given up. There was no question of cession, no question of transfer. This is not an exact analogy but, as it were, the title had never vested in the British; the British had taken possession and the result was that they gave up possession. It was wrongful occupation, found to be a trespass." (Verbatim Records, pp. 11053–56.)

To summarise the positions of the Parties on this matter, it may be said that Pakistan's position is that the 1914 Resolution, being a cession of British territory to an Indian State, must be considered null and void because made by incompetent authorities, without the King in Parliament or at least the King in Council, while the position of India is that the question of competence for cession of British territory does not arise with respect to the 1914 Resolution because it was not a cession but a restitution of territory to an Indian State as the rightful owner.

A third question concerning boundaries within India under British rule was put to the Parties by the Tribunal, reading:

"Does the boundary between India and Pakistan in the disputed area correspond to the boundaries between the Province of Sind, on the one hand, and the State of Kutch and the other Indian States abutting upon the Great Rann, all of which now form part of India, on the other hand, such as determined by or acquiesced in by the Paramount Power (Great Britain) on the eve of Independence?"

The answers of the Parties to this question were as follows:

India: "The boundary between India and Pakistan in the disputed area corresponds to the boundary between the former Province of Sind on the one hand, and the State of Kutch and the other Indian States abutting upon the Great Rann of Kutch which now

form part of India, on the other hand, as determined by, acquiesced in, accepted, admitted or recognised by the Paramount Power functioning through the Secretary of State, the Government of India or the Government of Bombay (or the Government of Sind after Sind became a separate Province) before Independence. The alignment of this boundary on the eve of Independence was as claimed by India."

Pakistan: "The boundary between the Province of Sind, on the one hand, and the States of Kutch and other Indian States abutting upon the Great Rann, on the other hand, in the disputed region, though known to lie along the centre line of the Rann, was never determined by the Paramount Power (Great Britain). The question of accurately determining it had been raised on several occasions but it remained undetermined. The Paramount Power was the only power that could have determined it by an express, deliberate, specific and publicly notified decision, as to that boundary... but this was never done.

"No question of acquiescence by the Paramount Power could arise in relation to a vassal state. Moreover, in the face of continuous and manifest exercise of jurisdiction and display of state authority in the northern half of the Rann by the British administration in Sind, no question of acquiescence in any boundary of Kutch that would be inconsistent with that position could arise; nor was any such boundary ever acquiesced in.

"The boundary between India and Pakistan, corresponds to the boundary where it in fact lay, between Sind and the aforesaid states, on the eve of Independence."

This question by the Tribunal and the answers of the Parties to it brought, thus, a fundamental point into sharp focus, the point being: can a boundary, such as the one in question, have become a valid one by such processes as acquiescence, admission or recognition, or not? In India's submission, recognition and acquiescence constitute the basis of its claim. (Verbatim Reports, p. 12831.)

This point emerged repeatedly during the oral hearings, in different connections and from different angles. On these occasions the logical basis of the point was often debated and it was the following: could acquiescence, acceptance, admission or recognition, being all principles of International Law, be applied in this case only if there was any place for International Law at all in India under British rule and, in the particular case, in the relationship between the Suzerain Power, Britain, and its vassals, the Indian States, and was there such a place? According to India, however, principles in question are not only principles of International Law but also of evidence: the attitude of a Party is a part of the evidence which enables the Tribunal to evaluate things that were done.

The positions of the Parties on this aspect of the issue are diametrically opposed.

The case of Pakistan is that International Law was not applicable to relations between the British Government and the Indian States, except to the extent that the British Government unilaterally applied it. Whenever the British Government decided to apply International Law as between itself and the Indian States, it adopted the principles of International Law as guidance for regulating these relations.

India, on the other hand, has expressed the view that the proposition that International Law was not applicable to the relations between the British Government and the Indian States is, if at all, true to a very limited extent. Principles like acquiescence, recognition, admission, estoppel, did apply as between the British Government and the Indian States.

The importance of this question resides in the fact that India relies on a great number of documents, such as Administration Reports and maps, dating from British times and describing or depicting the Great Rann of Kutch as belonging to Kutch State, which never elicited objections from competent British authorities. The clearest cases, involving the possible application of the above-mentioned principles were Administration Reports emanating from the Kutch Darbar, i.e. from the vassal, which encountered no contradiction on the side of the Paramount Power, i.e. on the side of the suzerain.

The Indian Memorial formulated the Indian attitude to the question by stating:

> "In the various works and references mentioned... the territory of Kutch has been described as including the entire Rann of Kutch; the area of Kutch has been mentioned as 'exclusive of the Rann' or 'besides the Rann'. Some of the references expressly state that the Rann of Kutch belonged to the Rao of Kutch or to the Kutch State. The description of the area of Kutch is including the Rann of Kutch and of the Rann of Kutch as belonging to the Rao of Kutch or the State of Kutch as accepted or at least acquiesced in by the Political Agent of Kutch, by the Government of Bombay, by the Government of India and also by the Secretary of State for India who were aware of the description." (Indian Memorial, para. 226.)

In its opening statement India took the same position. Introducing its documentary evidence, Counsel for India said:

> "I will present to Your Honours a large and long series of documents and maps where the British Government itself has admitted or acquiesced in the position that this particular line is the southern boundary of Sind... Your Honours have appreciated that there were two parties at all relevant times up to 1947 who stood, as it were, *vis-à-vis* each other. On one side were the British, and on the other side the Native States, the Native States being self-governing and self-ruling and Britain of course being self-governing also. Therefore, in a matter of land or territory bordering on Native States and British possessions, what the British acquiesced in or admitted is a matter of importance. It was for them to say, 'No, this does not belong to the Native States; this is a part of British territory'. If, on the other hand, they have consistently, as I shall submit, acknowledged this particular line as the end of their territory, then I shall submit that that is conclusive and binding upon anyone who claims title to it." (Verbatim Records, p. 26.)

Counsel for India states:

> "If something is asserted for a long time, where someone else has a duty of contradicting it and does not, a court will say this is sufficient ground for assuming the truth of what has been said by one side... when you have the particular relationship that existed in this case, where one was under a duty to make a report, where one was under a duty to state what was conceived to be the real state of affairs, the other was under an obligation to examine it, to correct it, if necessary, by virtue of being a suzerain interested in the administration of the territories which it had guaranteed of the vassal State, the position is not that of two independent Powers, strangers to each other... It is father and son, mother and daughter, whatever you like to call it... If something is said by the one there is a duty, I submit, to deny or correct it. In fact, there have been corrections of a number of things in these Reports." (Verbatim Records, pp. 12104, 12853.)

Pakistan refuted in its answer first of all the assumption that International Law did apply in relations between suzerain and vassals in India. To this effect Pakistan quoted from Ilbert's *Government of India* where the author writes:

> "It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make

war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of the British Government on the application of the parties to the dispute." (Ilbert, *op. cit.*, 1915, p. 166.)

"The result of all these limitations on the powers of the Native Indian States is that for purposes of international law, they occupy a very special and exceptional position. 'The principles of international law', declared a resolution of the Government of India in 1891, 'having no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the sovereignty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter'." (Ilbert, *op. cit.*, p. 169.)

Pakistan also quoted Tupper to the same effect. Tupper says:

"The theory of international law assumes that the powers concerned are equal. States which are subordinate to a common superior, by whom their external relations are controlled, are in a different position, and to them the rules which govern the intercourse of nations with each other are often inapplicable. Such is especially the case with the Native States of India which are not permitted to have diplomatic relations either with each other or with foreign powers, except with the consent and through the medium of the British Government... The relations between the British Government and the subordinate States of India cannot be governed by the International Law of Europe, but must be determined by the positive engagements subsisting between them, by the principles which have regulated the actual practice and usage of the British Government as the paramount power in India, and by the requirements of the general interests of the Empire with which the interests of the Native States are both by treaty and by circumstances identified." (Tupper, *op. cit.*, Vol. I, p. 4.)

"The sovereignty of the Native States of India is only a limited sovereignty, even in their internal government, and it is at once our duty and our right, as the Paramount Power in India, while scrupulously respecting all treaties and positive engagements with Native States, to regulate the exercise of the limited sovereign rights which they enjoy with a view of the general good of the Empire." (Tupper, *op. cit.*, Vol. I, p. 5.)

"...the Indian Feudatory States are in political subordination to the Paramount Power, and the maxims of International Law are not applicable to the relations between them and the British Government." (Tupper, *op. cit.*, Vol. I, p. 1.)

Pakistan says that such was the general position, and that, when the cases from which these propositions have been derived are examined – cases where an Indian State was trying to rely in respect of some assumed right for itself or in respect of some obligation on the part of the British on a principle of International Law – each time the answer was that International Law had no bearing.

However, Tupper is quoted by Pakistan, where he defines the limits of this general position:

"It must not be inferred from anything already said that there is no use for International Law in India, and that no portions of it need to be studied by Political officers." (Tupper, *op cit.*, Vol. I, p. 14.)

"As to the permissible application of rules of International Law in cases arising within the Indian Protectorate, a good many instances can be adduced of reference being made to these rules by the Government of India or its Secretaries or Members of the Governor-General's Council in discussing cases from Native States; and, so long as it is clearly remembered that the system of relations between the Paramount Power and the Native States is in no way governed by International Law, and that any application of it by that Power to those States must proceed from the Paramount Power itself as a matter of grace and concession, this method of argument may, it is believed, occasionally have advantages." (Tupper, *op cit.*, Vol. I, p. 15.)

"As a further illustration of the application of the maxims of International Law at the option of the Paramount Power, and if there be involved no derogation from its supremacy, we may refer to the remarks of Sir Charles Grant, then Foreign Secretary, in the Secunderabad Jurisdiction case of 1883. He said: 'The rights of intervention are stronger in regard to States in subordinate alliance with us than they would be in regard to sovereign and independent States. Therefore, if International Law, as regulating the mutual relations of equal Sovereign States with each other, allows us to exercise certain rights in regard to those States, *a fortiori* we are entitled to exercise them in States in subordinate alliance with us'." (Tupper, *op. cit.*, Vol. I, p. 16.)

And Tupper is quoted further as saying:

"International Law, though it does not govern the relations between the Paramount Power and the subordinate States, may be taken as a guide in considering questions which affect them, so far as it is consistent with Indian Political Law, and provided that its application in the particular case does not derogate from the Paramount supremacy of the British Government." (Tupper, *op. cit.*, Vol. I, p. 18.)

The Valuation Judgment of Mr. R. N. Kennedy was quoted as follows:

"As to international cases and cases from English law ... I would observe that international law and English law are alike inapplicable to the case of two States like Cutch and Morvi except so far as they embody precepts of natural law." (*Interstatal Disputes Between Cutch and Morvi*, p. 27.)

Pakistan further quoted Tupper when the author speaks of the applicability of International Law to river boundaries within India:

"It is interesting to note that in dealing with river boundaries as between British Indian and State Territory, the Government of India have, to a great extent, followed International Law; and that International Law, so far as it relates to this subject, is derived directly from Roman law." (Tupper, *op. cit.*, Vol. II, p. 22.)

On this basis Pakistan develops its position with regard to the applicability of specific relevant principles of International Law, such as the principle of acquiescence, to the present case.

The two component parts of Pakistan's position appear to be the following:

(i) As International Law did not apply to the relationship between the suzerain and its vassals, no specific principle of International Law can apply.

"Actually, the political subordination of Indian States was a shade lower than vassalhood, because ... they cannot have relations with each other. There is political isolation coupled with political subordination, and in that state of affairs to say that we have made a statement in our report, why have you not taken the trouble of contradicting it, therefore, we have acquired rights, that question cannot arise in that context." (Verbatim Records, pp. 4908–9.)

(ii) Even if International Law could apply, the principle of acquiescence could not have applied in the present case. Counsel for Pakistan stated:

"If I am living in my house and I continue to live in my house, if somebody starts writing in his own reports that 'this house belongs to me', I am not bound to take notice of it. Even if he were to send a notice to me, I am not bound to take notice of it, I can continue to live in my own house. It is only when an encroachment takes place that something else might begin to happen, but merely putting down, as is put down in Kutch Administration Reports, and even if someone in my office to whom I have entrusted some work, were to put down after seeing what has been claimed, to repeat that assertion, so long as I am living in my house I am under no legal obligation to take notice of it or to contradict it.

"As between States, if they are equal and independent States, the question of being bound to take notice of State 'X' begins to say that such and such a territory is mine or

begins to make assertions on paper, State 'Y' that has actual control of it may not take any notice of it.

"So even as between equals, you do not take notice and you are under no obligation to take notice. There is a presumption against renunciation of rights... and very much stronger acts have to be done before renunciation of rights can be inferred than merely omitting to contradict." (Verbatim Records, p. 4908.)

"You do not merely, by making statements in your reports, create the situation which attracts the doctrine of acquiescence. It is when something has been done, and initially something that you do not have a right to do, you keep doing it, and somebody suffers it, without raising an objection, than from the submission to the unlawful conduct, shall I say, of the submission to, or suffering, the encroachment of someone else without protest over a period of years, it might be said you have acquiesced. But the question of acquiescence does not arise until that situation is created." (Verbatim Records, pp. 4906–7.)

To corroborate this position, doctrine was referred to and two quotations were made:

"Acquiescence is the most passive form of a unilateral and legally relevant attitude. In view of the presumption against any renunciation of rights, it may be inferred only in circumstances in which, in accordance with the governing rule of good faith, a legal duty exists to avoid any such interpretation of silence." (Schwarzenberger, *International Law*, Vol. I, 3rd Ed., 1957, p. 549.)

"Mere silence on the part of a State does not imply renunciation; this occurs only when a State remains silent although a protest is necessary to preserve a claim." (Oppenheim, *International Law*, Vol. I, 8th Ed., 1966, p. 876.)

The above quotations and statements of Pakistan appeared to have a logical pivot: principles of International Law such as acquiescence could not possibly have had the effect of reducing or diminishing the rights of the Suzerain Power while they could affect adversely the rights of the vassal.

This idea was expressed on several occasions directly.

"...wherever help can be taken from, [international law] would be applied. The principle that has to be seen is this. The application must not in any way be inconsistent with the paramount position of the vassal State. So long as that does not happen they will take aid from international law. But no-one can say to the British Paramount Power during the day of its paramountcy that because of international law it was obliged to do this or that." (Verbatim Records, p. 9071.)

"The Maharao may acquiesce, but for the British the question does not arise." (Verbatim Records, p. 7698.)

"...as was stated in one of the passages from Tupper that I read out, that is as between equals a rule applies, then *a fortiori* it applies as between unequals in favour of him who is dominant. Thus the position relating to international law and its application is that, while the Paramount Power could apply international law, and in its favour international law would be applicable, the vassal State cannot invoke international law as against the Paramount Power." (Verbatim Records, p. 12911.)

The position of India as elaborated in its reply turned around the opposite idea as its logical pivot: principles of International Law were a protection of the rights of the vassal against his suzerain:

"...quite apart from an express provision [i.e. by a Treaty such as the one of 1819] ...the relationship in itself contains a guarantee, because it is in consideration, in the old days, of a tribute or some kind of payment being made or service rendered, that the suzerain says, 'You are a state. We know you are the ruler of a particular territory within which you exercise your powers but in some respects you exercise those powers subject to my suzerainty'. But did it or could it mean that the territory which the vassal

ruler has is subject to being taken away or being reduced or diminished at the will of the suzerain power? My submission is, no, it could not be. The very implication is that that territory is the territory within which the ruler exercises his powers but subject to the control, in some respects, of the exercise of his powers within his own State. In other words, as between the suzerain and the vassal State the extent of territory is not a matter in respect of which suzerainty prevails. The limitation is that if there is any quarrel or dispute with any other State in regard to anything, the suzerain will arbitrate, but as between the suzerain and the vassal the very basis is the existence of that State and that State is guaranteed." (Verbatim Records, p. 9531.)

Evidently, the British could disregard their obligation.

"If they wanted they could have marched in with troops on the next day and taken possession of it. They could have told the Maharao politically: look, if you do not give up the Rann of Kutch, or if you do not do such and such a thing, we might get up a case against you and unseat you, put your son there; we may take away your territory from you. All these were possibilities. They became, of course, less and less possible as time went on. What might have been a possibility in 1819, 1820, 1821 or up to 1840 or 1850 became practically an impossibility when you reached 1915, 1920 and 1925. It would not have been heard of. But however that may be, is that the implication of saying that the British could not acquiesce or the British could not recognize? Assuming for a moment that that is so, as between the British and the vassal State, politically they were strong, politically they were suzerains, politically they could have exercised pressure. But supposing that the matter had even then gone before an arbitrator appointed by both sides. The arbitrator would have had to evaluate the evidence. When evaluating the evidence he would say: I find on this side an assertation over years – not rejected by the other side – and admissions on which the other side has relied – or certainly they were known to the other side. Years and years have gone by. Am I now going to allow one side to go back on it?... The arbitrator could not say that because this party might have done something privately and might have done anything it liked, therefore he would let it take the attitude before him that it can do anything it likes and reject everything it has said." (Verbatim Records, pp. 1211–2.)

"Now, my learned friend has stated at the end of his argument that 'I stand in the shoes of the British'. Now, that has two implications. If it is intended by that to say that they could exercise rights which a suzerain Power could have exercised, or take an attitude which a suzerain Power could have taken to a vassal, that cannot hold because that is not the relationship between the two countries. In any event, that would be a private matter, but when we come before a tribunal, they stand in the shoes in this sense, that they will not be allowed to do by the Tribunal what the British themselves would not have been allowed to do if something in the eyes of the tribunal was such as bound Britain as a matter of evidence, a matter of fairness, as a matter of not disturbing settled boundaries, as a matter of not allowing a party to go back on its word or on what it has represented. Then Pakistan is no better off. They stand in their shoes as they themselves have admitted, in which case they are equally bound.

"One way or the other, all this business of vassal and suzerain is really not in their favour; it is in my favour. When you come to look at these documents and these various things that have been done, they are of much greater weight, so far as I can see, as between the two, because there was an obligation of the suzerain of Kutch to protect its territories, to look after it ..." (Verbatim Records, p. 12112.)

"May I put it this way ... as suzerain Britain might have said, dishonestly perhaps: it is true I have admitted things and it is true I have recognised a particular state of affairs, but I am the suzerain and I am not going to have any more of it; I will go back on it, take it away from you, compel you politically; you are the vassal. And the vassal might say: well, what can I do? That is not because the admission or the recognition has some in-built quality of repudiability which it carries with it. The repudiability, if I may use that word, is by virtue of the position as between suzerain and vassel. It is true that an independent tribunal would take no notice of it, would say: you might have been entitled to go back on it because you were a suzerain State, you might have said: I do

not care about all this, you are the vassal and I will exercise pressure on you; you refuse at your peril; and the vassal would have given in. But when it comes to a third party deciding matters, it cannot accept that attitude and say that the admission or recognition itself has a sort of in-built quality of repudiability which goes along with the admission. The quality only exists so long as the particular relationship remains; once that relationship is ended then, assuming that quality to have been there, it comes to an end in any event." (Verbatim Records, p. 12114.)

As to the point of departure in the debate about applicability or non-applicability of International Law to the peculiar relations between the British and the Indian State, the position of India is that

"... the statement that International Law has no application, is not an absolute one even in Tupper. It has been said that it applies when the Suzerain thinks that the principle can be applied; or it may say, no, it cannot be applied. But these instances were all where, in the administration of the State, something had to be determined – as, for instance, the capacity of the Native State courts to try British subjects, and matters of similar nature, for example, the regulation of succession, that kind of thing. Some things, for reasons of British prestige, would not be tried by Indian courts in the Native States." (Verbatim Records, pp. 12114–5 and 12120.)

But such is not the case in territorial matters.

"After all, if Britain says and admits to Kutch: This much is your property and by virtue of the Treaty of 1819 I have guaranteed that territory, can some principle, some non-obligation of International Law – as it is said – enable Britain to say: I shall not guarantee your territory any longer although I have admitted that your territory does consist of so much. I have admitted it to be your territory, therefore I am bound to guarantee it, but that admission is not binding upon me..." (Verbatim Records, p. 12121).

"That is why my submission to you is that this question of International Law not being applicable has no relevance at all." (Verbatim Records, p. 12122.)

As to the principles of International Law to be applied to the case, India stresses more particularly the principles of acquiescence and of recognition.

The definitions of acquiescence submitted by Pakistan by means of two quotations from noted authorities on International Law, Schwarzenberger and Oppenheim, were not contradicted by India. But the consequences of the definitions drawn by Pakistan were denied:

"Acquiescence", said the Counsel for India, "... would be a non-action, a silence in the face of a repeated assertion which is *prima facie* contrary to one's interest. Now in the matter of acquiescence, questions do arise; one was put by my learned friend. He says, am I bound to deny something that is said, however untrue? I am not, I am only bound to take action or protest or issue a denial if something is done. Secondly, the question would be, was there a duty on the person to deny in all the circumstances of a particular case? Now, if I put forward this, barely stating that Kutch in its Administration Reports asserted that the Rann belonged to Kutch, the answer may be, well, they may keep on asserting it, but what is the consequence? Was there a duty upon the British to deny it?

"Now, of course, I could submit... that there was a duty to deny. Now, this is not a case of an assertion at large, someone merely stating that this is so; it is an assertion, as it were, addressed to and directed to the other party. These Reports went through a particular cycle to which I have already drawn your attention, were examined, looked at, right up to the Secretary of State... that is one aspect which I say cast a duty to deny. The second was that Britain was a suzerain Power and Kutch a less than vassal State making an assertion as against the suzerain Power, and therefore I say there was all the more a duty of good faith to deny it...

"The whole object of these Reports was to place a set of facts for examination, but again here it is not simply a question of an assertion and a silence on the other part,

there is more. There is an approval, there is the issuance of documents by the suzerain Power itself. There are admissions, express, and by accepting these Reports an implied admission, and you will have noticed ... on occasion that if something was not correct, it has been noted, it has been commented upon by the Government of India.

"Therefore, ... even on the basis of acquiescence which is ordinarily a principle surrounded by certain difficulties, even there ... is no difficulty; but I go further and say there is a recognition which is an admission of the state of affairs, and will you allow a person to go back on it?" (Verbatim Records, pp. 12851–2.)

"... looking at it generally; there are two neighbouring States, both are international entities, and one makes an assertion. There is perhaps no duty on the other to say anything about it unless it is accompanied by some invasion of territory or some actual fact or act done. But when you have the particular relationship that existed in this case, where one was under a duty to make a report, where one was under duty to state what was conceived to be the real state of affairs, the other was under an obligation to examine it, to correct it, if necessary, by virtue of being a suzerain interested in the administration of the territories which it had guaranteed of the vassal state, the position is not that of two independent Powers strangers to each other. The one asserts something, the other is under no duty to deny. It is father and son, mother and daughter, whatever you like to call it. It is a very different proposition; if something is said by the one there is a duty, I submit, to deny or correct it. In fact there have been corrections of a number of things in these Reports." (Verbatim Records, p. 12853.)

In such a way, appeared to be India's conclusion, the circumstances of this case fit perfectly into the definitions of recognition as formulated by doctrine. And India quoted the following statement of Schwarzenberger:

"The pliability of recognition as a general device of international law makes recognition an eminently suitable means for the purpose of establishing the validity of a territorial title in relation to other States. However weak a title may be, and irrespective of any other criterion, recognition estops the State which has recognised the title from contesting its validity at any future time.

"In the Palmas case (1928), Judge Huber incorporated recognition in his definition of territorial sovereignty: 'In general, a situation recognised and delimited in space, either by so-called natural frontiers as recognised by international law or by outward signs of delimitation entered into between interested neighbours, such as frontier conventions, or by acts of recognition of States within fixed boundaries." (Schwarzenberger, *op. cit.*, pp. 299–300.)

And Schwarzenberger was quoted when referring to the Judgments of the Permanent Court of International Justice in the Jaworzina Boundary case of 1923 and the Eastern Greenland case in 1933:

"Thus, it emerges that the device of recognition can be employed as an independent root of title." (Schwarzenberger, *op. cit.*, p. 301.)

"Recognition is one of the means by which subjects of international law may make a situation or transaction *opposable* to themselves. Its legal effect is to create an estoppel. By granting recognition, subjects of international law debar themselves from challenging in future whatever they have previously acknowledged ... Recognition is a matter of intent. Unless excluded by prohibitive rules of international law as, for instance, recognition of the sovereignty of another State over territory under the undisputed jurisdiction of a third State or premature recognition of new States or belligerents, the mode and scope of recognition – and consequently, of the estoppel which it creates – is entirely determined by the intention of the recognising entity. Recognition becomes effective by unilateral communication to the addressee. It may be express or implied. The presumption, however, is against recognition by inference." (Schwarzenberger, *op. cit.*, pp. 127–8.)

As to the facts, or rather acts by the Suzerain which amounted to recognition India drew a parallel between the present case and the case concerning the Temple of Preah Vihear.

India quoted the Judgment of the Court:

"The Court will now state the conclusions it draws from the facts as above set out.

"Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier." (Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: *I.C.J. Reports 1962*, p. 32.)

On this India commented:

"...there may be no absolute parallel, these were two independent entities, the question of stability of frontiers and so on, but in a sense it does apply; you acknowledge a frontier, recognise it, act upon it. Kutch accepts that frontier, it has not subsequently found any need for readjusting the historic line except in 1914. Then, has Britain also not enjoyed in a sense the benefit of a stable frontier, of an accepted historical frontier to which there is no further challenge, and the matter has been put at rest?" (Verbatim Records, p. 12862.)

India further quoted the International Court:

"France, and through her Cambodia, relied on Thailand's acceptance of the map. Since neither side can plead error, it is immaterial whether or not this reliance was based on a belief that the map was correct. It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it." (*Ibid.*)

On this Counsel for India commented:

"Applying it with some particularity to the 1914 agreement – I do not go into the ambit of it, whether it is related to this bit only or to the whole... it was a compromise and as a compromise obviously a certain benefit accrued to Britain... having got that benefit, she will not be allowed to go back on it."

"The Court however considers" – continued the quotation – "that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognised the line on that map as being the frontier line..." (*Ibid*)

And Counsel for India concluded:

"What is more, in our case it is not merely acceptance of a line on a map, it is actually the making of a map as part of an agreement which has a line on it. I refer at the moment not to the numerous other maps which have been put forward by Britain herself as showing a particular line." (Verbatim Records, p. 12862.)

This was, evidently, a way of referring precisely to all the other maps issued by British authorities.

In its rejoinder, Pakistan insisted on its point of view and submitted as follows:

The position being what it was, the *inter se* limits between British and Indian territories could be corrected by the British at any time if after due inquiry they found them to be incorrect. Normally it was the ruler who took the initiative if he thought that control or management of a territory that he regarded as his was being denied to him.

Within the political system established by the British in India, the rights of the British were subject only to the political system of the British. In regard to British rights, no question of International Law could arise between the British and any of the Indian rulers established or maintained by them in political

subordination to themselves and in political isolation from each other as members of a single political system.

No statement, whether express or implied, no act, whether deliberate or negligent, and no omission, whether advertent or inadvertent, of any functionary of the British Government, however high, could have the effect of transferring a right vested in the British Crown to any of its vassals and no such statement, act or omission could deprive British subjects of their vested rights. No question of estoppel, admission or acquiescence could thus arise with reference to the continuance of British rights as between the British and their vassals.

Pakistan relied on the Bhownuggur Case to deduce these propositions. In that case, an arrangement with an Indian chief in Kathiawar was formally described as a cession of territory in a notification by the Government of Bombay. The High Court of Bombay held that the Government of Bombay had no power to cede British territory. A review of that judgment was asked for on the ground that the cession in question was under the orders of the Governor-General in Council, "Her Majesty's Secretary of State having decided that Kathyawar was not British territory." During the pendency of the review petition, the Indian Legislature enacted:

> "A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, prince, or ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification." (Verbatim Records, p. 15904.)

Soon afterwards a notification appeared in the *Gazette of India* to the effect that the territory in question had been ceded. The High Court held that it was beyond the power of the British Crown, without the concurrence of Parliament (i.e. beyond the powers of the Secretary of State) to make a cession in peace-time and that the aforesaid enactment was beyond the power of the Indian Legislature.

On appeal, the Privy Council left this constitutional issue undecided. Instead, they examined the correctness of the assumption on which the case had proceeded – namely that the Secretary of State had, in fact, ceded the territory in question. The only evidence of the part played by the Secretary of State was the statement of the Government of India that "Her Majesty's Secretary of State having decided that Kathyawar was not British territory". The rest had been done by the Governor-General in Council or by the Government of Bombay. The Privy Council held:

> "...if such an opinion had been expressed by the Secretary of State for India (of which no direct evidence is found in the papers before them), and if that opinion could be proved to be well founded, it would still not have the effect of converting [the transaction in question] ...into a cession of British territory ... Such a cession would be a transaction too important in its consequences, both to Great Britain and to subjects of the British Crown, to be established by any uncertain inference from equivocal acts." (Verbatim Records, pp. 15923 and 15930.)

Pakistan contends that, so far as the Government of India were concerned, they had by a formal and unequivocal notification in the *Gazette of India* ceded the territory in question. If the Government of India had the power to cede the territory that would be the end of the problem, and no further question would arise. But since the Government of India had no such power, the question arose

whether the Secretary of State had it. The Privy Council held that it was not necessary to decide whether the Secretary of State had such a power, because what the Secretary of State had done in that case did not amount to a cession by him. The Privy Council adverted to the two questions, whether the opinion that was attributed to the Secretary of State was, in fact, entertained by him, and whether that opinion could be proved to be well founded. Without going into those questions, they decided that, even on the assumption that the Secretary of State had, in fact, decided and decided correctly that Kathiawar was not British territory, the territory in question could not, by this indirect process, be regarded as having been ceded by the Secretary of State. Pakistan further contends that as no question of the Governor-General in Council having the power to cede territory arose, the Privy Council enquired into the actual nature of the arrangement made and came to the conclusion that it was such as to be beyond the competence of the Governor-General in Council, without legislative sanction. In spite of a formal transfer, and public notifications in official gazettes, and in spite of solemn official acts in implementation thereof, the British status of the territory in question remained wholly unaffected.

Pakistan argues that if there was any room whatever for the doctrines of acquiescence and estoppel in the relations between the British and their vassals, there could not be a clearer case than this one for their application. Here the matter did not rest merely on the non-objection of the Secretary of State to some feature on a map which was submitted to him for approval of colours and external boundaries, as with the non-correction of an entry in a statistical abstract, but on a positive official statement that the Secretary of State had decided that Kathiawar was not British territory, in pursuance of which the Governor-General directed the Government of Bombay actually to take steps in implementation, and officially to notify, while, in defence of the steps so taken, the Indian Legislature enacted a law, and the Governor-General in Council, under that law, purported to create conclusive proof of a valid cession all those steps taken expressly for that purpose were regarded as ineffective to convert British territory into territory that was not British.

Pakistan stresses the point that British rights could only be affected by direct decisions and never indirectly or by inferences.

The tribunal takes note that a detailed analysis of the Bhownuggur case was made by Pakistan in its final argument and India had no opportunity to reply.

According to India the question of cession does not arise in the present case. The Rann of Kutch was traditionally a part of Kutch even before 1819. The events relied upon by India subsequent to 1819 evidenced either the boundaries existing in and before 1819 or a consolidation of those boundaries or consolidation of title with respect thereto. India submits that the Tribunal could not wipe out all that had happened for a century or more – the 1914 Resolution, the maps, the position taken up by high officials, the Government of India, the Secretary of State, because everything done had either been factually wrong or legally wrong for some alleged legal flaw or because there was confusion as to the maps. International public policy requires that there should be stability and good faith between nations. It is not good, it is not right, it is bad faith when

one party, having acted in one way throughout, at some later stage says, "By error or otherwise I claim to go back upon it".

India observes: You acknowledge a frontier, recognise it, act upon it. Kutch accepted a frontier; it did not subsequently find any need for readjusting the historical line, except in 1914. Then has Britain also not enjoyed in a sense the benefit of a stable frontier, of an accepted historical frontier to which there is no further challenge.

With reference to the Indian argument about the "consolidation" of the boundary of Kutch, Pakistan submits that, since it is admitted by India that Kutch did not increase since 1819, it would be inconsistent to suggest that by the "process of historical consolidation of boundaries" it had, in fact, increased. Pakistan further cited passages from Jennings, *The acquisition of Territory in International Law*, to the effect that actual effective control is necessary both for the creation of a title and its maintenance, and that the process of consolidation cannot begin to operate until actual possession is first enjoyed.

Pakistan points out that the Indian contention is that the boundaries as depicted in the survey maps had been consolidated in any event before 1819, and argues that for this purpose, therefore, actual physical occupation, possession and control of Kutch in 1819 has to be proved.

The British followed a declared policy of not taking any step that might be capable of being taken as overruling, prejudicing or otherwise jeopardising the claim of a vassal before the claim had been duly entertained and formally decided.

Omission to contradict assertions of a claim by a vassal did not therefore mean an acceptance of that claim. The British silence in regard to informal territorial claims of vassals is intelligible also on the ground that they stood in the position of arbitrator and would have to decide those claims if formally brought by the vassal.

CHAPTER V: SURVEYS AND MAPS

1. *Maps as Evidence*

India relies heavily on surveys and maps. Pakistan had, therefore, to deal with these subjects at great length. The questions related to surveys and maps thus became one of the main issues of the case.

The number of maps submitted to the Tribunal is large. These maps are of the most different type, character and scale. Not all deserve the term maps. Some are mere sketches.

The origin of the maps also differs considerably, from maps produced by travellers or private geographers to those produced by professional surveyors and edited by the Survey of India. In all respects, then, the spectrum of maps is rich.

Inevitably the question of the evidentiary value of these maps arose.

In the Indian Memorial it is said that maps "establish affirmatively" or that they "substantiate" or "indicate" where the boundary was, while a "systematic and scientific survey" (such as the Survey of Sind in the years 1855 to 1870) could "determine" a boundary, in the sense, explained in oral argument, of "presenting pictorially" and thereby "defining" an existing boundary.

Counsel for India states that in the present case maps are conclusive evidence in India's favour, and also states:

> "... that the line is a historically recognised line along the northern edge of the Rann. We submit that we have established that, on the maps alone, regardless of documents ... If you look upon the maps as substantive evidence, as in this case they are – and indeed, Sir, as I mentioned earlier, I am not aware of any other case where maps have played such a large part; call them basic, call them derived maps, whatever you like – they are of both kinds – they have authority behind them, they have sanction behind them, they have approval behind them; they have even co-operation ... in the making of some of them. That being so, *per se* they do establish that boundary." (Verbatim Records, p. 15411.)

On the other hand, Pakistan states that it has produced maps, for its part, mainly to demonstrate that the evidence derived from the maps on which India relies is not free from error. Pakistan's approach to maps is described thus:

> "What we are really concerned with is, that according to the submission of Pakistan, certain boundaries have come to be shown that have no business to be shown as boundaries ... Where exactly is the error? I submit that so long as I can discharge the main burden of showing that error is manifest, there is all that evidence, and these maps cannot override or contradict it, nothing further remains to be done. But since my learned friends have based practically their entire case on maps, I think it is desirable that I should place before you such material as is available for being enabled to trace how or where the error could have occurred, not that, I submit, it is really of any consequence that we should conduct an enquiry into how or why or where the actual error took place." (Verbatim Records, p. 6272.)

The Indian Counter-Memorial having criticised some pre-survey maps submitted by Pakistan as "unreliable, inaccurate or incomplete", the issue was

widened so as to cover the question of the relative value of official or unofficial maps, as a question of principle.

The Pakistan Final Memorial affirms that a map produced by a non professional cartographer, irrespective of his technique of depiction, might contain the statement of a disinterested witness and that the weight of such testimony is not reduced by the fact that such a cartographer was not an official. According to Pakistan, each medium of expression has its own capability and its own limitations. A map is no more than a statement in the medium of lines. It has to be judged like any other statement. The relevant enquiry will have to be as to what the map maker was trying to say and what was the basis for his belief. The deficiency of the map maker in drawing the contours would not necessarily affect the reliability or otherwise of his knowledge. To corroborate this position, a publication of the Ministry of External Affairs, Government of India (February 1961) entitled *Report of the Officials of the Governments of India and the People's Republic of China on the Boundary Question* is quoted. Here the Indian Government itself stated:

> "Regarding the map in the Atlas of the Chinese Empire brought out by the Commercial Press, Shanghai, one of the foremost publishing house of China, in 1908, it was contended by the Chinese side that the map was unofficial and therefore inaccurate and that the boundary had not been clearly marked. The value of scientific unofficial maps as evidence of traditional boundaries had been stated in such great detail earlier by the Indian side, and was in fact so well-recognised, that it did not require repetition ... The Chinese side summarily dismissed unofficial modern maps of Chinese and foreign cartographic organisations. The Indian side regarded this attitude as unacceptable. Such maps were the result of scientific research and the objective efforts of reputable cartographers and reflected the generally accepted understanding of the boundary alignment at the time that they were drawn. They therefore constituted powerful evidence of the traditional location of the boundary, specially when drawn by scholars of disinterested third countries or Chinese cartographers of distinction ..." (Pakistan Final Memorial, Annex Q, p. 83; italics omitted.)

The same publication stated:

> "The Chinese side again missed the significance of the unofficial maps cited by the Indian side. These maps, specially when drawn by well-known cartographers on the basis of first-hand information supplied by geographers of repute, provided objective, scientific and disinterested proof of traditional boundary alignments ... The value of unofficial maps, as had already been pointed out by the Indian side, was that they depicted the traditional and customary boundary alignment as was known at the time." (*Ibid*)

Counsel for Pakistan further stresses the point of the relative weight of maps and of non-cartographic evidence of a boundary by stating:

> "It will be my submission that maps are, anyhow, secondary pieces of evidence. The primary piece of evidence is always the documentation, the descriptions, the acts by which boundaries are settled – the treaties. Those are the basis on which boundary alignments are ascertained. Maps are merely depictions, but it can happen that a witness can equally rightly portray by lines on maps what he could have written in words, and when a witness gives his evidence of the category that I submit is the superior category by means of adopting a cartographic technique, the fact that he is adopting that technique does not detract from the weight of his evidence." (Verbatim Records, p. 4413.)
>
> "The maps published by the Survey of India were primary evidence for all that the Surveyor could observe on the ground. They were secondary evidence regarding the alignment of boundaries that were not observable on the ground. All statements in a survey map could be rebutted by better evidence. The Survey of India maps were not the official medium for the formulation of the definition of a boundary. The official

medium of the determination of a boundary by the Paramount Power was a notification. The maps therefore did not represent the authoritative view of the Paramount Power, since that view, if the view of a Paramount Power, had to be expressed through a different medium." (Verbatim Records, p. 18321.)

Pakistan is primarily interested in pointing out the necessary caution with which maps showing political boundaries should be used as evidence.

In this respect Pakistan relies on a book by Sandifer, *Evidence before International Tribunals* (1939). In a chapter entitled "Maps as 'Hearsay' " the author writes:

"Reference has previously been made to the 'hearsay' character of a great many of the maps introduced in evidence in boundary arbitrations in proof of contested geographical and political facts. It is necessary only to reiterate here that maps furnish an especially forceful illustration of the dangers inherent in the use of hearsay evidence. As to geographic facts, maps are hearsay evidence unless they are based upon an original survey of the natural features depicted by the map. As to political facts they are hearsay in character unless the line portraying the boundary on the map was drawn or officially adopted by the officials responsible for the negotiation and definition of the boundary, or unless the map was prepared by an individual or commission designated to survey and chart the line. So far as the question of the extent of the sovereignty of any given state is concerned, therefore, maps are, in a very great majority of cases, hearsay or secondary in character. They can seldom be based on information obtained by personal observation or participation in the definition and delimitation of the boundary. They are at best, in most instances, a portrayal in graphic form of facts contained in the official sources upon which they are based. In consequence, their value depends peculiarly upon the integrity and accuracy with which the cartographer portrays the facts as set forth in the sources from which he draws his information." (*Op. cit.*, pp. 259–60.)

Dealing with the British Guiana-Brazilian Boundary Arbitration, the same author quotes the following argument of Great Britain:

"Those maps which may seem to indicate a boundary are, in a manner, a class by themselves... as has been stated over and over again in this case, none of them can carry authority apart from the name of the geographer, unless something is known of the reasons for which they were drawn, or unless they appear to conform to some geographical principle or historical fact. The mere existence of a line which is against historical principle or historical fact can carry no weight, whatever may be the authority of the map on other grounds." (*Op. cit.*, p. 260, note 63.)

The Indian answer to the above points is essentially the following:

(*a*) The maps relied upon by India were produced by the expert department of the Government of India, the sole duty of which was to survey and draw maps. These maps are in fact the maps of the Government of India itself. Some of them were expressly approved by all authorities, from the Secretary of State to the Commissioner in Sind, and all of them were circulated not only to authorities but also the world at large. They have stood the test of time for nearly a century and have been regarded by all concerned as authentic for all purposes, including boundaries. It was the duty of the Survey of India to draw boundaries on these maps and these boundaries were accepted and acted upon by the highest to the lowest. They are also supported by other documentary evidence. The administration of a sub-continent like India would have been impossible if no political boundaries were drawn. Not only was the Survey of India authorised to draw these political boundaries but it was its duty to draw them and it was the only authority which could do so. No other authority in India had the right to draw on a map authoritatively the boundaries of the various provinces, divisions or sub-divisions.

(*b*) On the point of comparison or relative value of cartographical and non-cartographical evidence, India does not object to Pakistan's fundamental position. Counsel for India said:

> "My friend has told you that except for one class of maps [those forming part of a treaty] they are only secondary evidence. I appreciate that also, but what you are looking at is by and large a mass of maps acquiesced in, if I may say so, or accepted, or taken to be showing a particular situation and my submission is that the Tribunal will not discard them merely on the ground and on the suggestion made that there was a mistake or that people were confused." (Verbatim Records, p. 9422.)

Counsel for India also stated:

> "In a broad sense I agree ... that if you have your documents, these, of course, must be looked at and they must have their necessary weight; but where you have a document with a map then, of course, you read the two together and a map has as much weight as the document as a part of an integrated piece of evidence." (Verbatim Records, p. 12982.)

(*c*) India also quotes, *i.a.*, the following passages from Sandifer:

> "The principles applicable to the use of maps in international arbitral proceedings constitute a collateral rather than a principal part of the 'best evidence' rule as defined in the foregoing sections. Neither parties nor tribunals have proceeded upon the theory that only the 'best' maps, if available may be presented and admitted in proof of the existence of a given boundary. Parties have frequently employed a strategy, in fact, apparently based upon the hope of overwhelming the tribunal by sheer force of numbers. Tribunals, on the other hand, have admitted maps indiscriminately, rarely stating that only 'primary', or 'original', or 'official' maps would be considered acceptable, if available. They have, however, probably applied severer tests in evaluating maps than almost any other kind of evidence. This is due to the fact that maps are in most instances, at best, secondary evidence, and frequently hearsay in character. Consequently, although the 'best evidence' rule is not applied strictly to maps, they constitute one of the best instances of a distinction between primary and secondary evidence, and of the consequences attaching to such a distinction." (*Op. cit.*, pp. 156–7.)

To emphasise the weighty character of official maps and the decisiveness of Indian Map B-44 (Resolution Map) and Indian Map B-45 (Index Map of Sind), India relies upon the following passage from another chapter, entitled "Maps as Evidence", from Sandifer, cited by Pakistan:

> "It is only in the occasional instances in which maps are made in integral part of the agreement to which they are attached, the boundary described in the agreement being marked on the map, or in which certain maps are adopted as the basis of an agreement, or designated as official maps, that maps may be said to assume the character of primary or original evidence. In such cases the 'supposed territorial limits' may be sought for in the map itself. A map of this character will take precedence over any other maps which may be introduced as evidence, and will be accepted as the best source collateral to the text of the treaty itself for the determination of the boundary." (*Op. cit.*, p. 157.)

India further cites the *Report upon the Cartographical Testimony of Geographers*, by S. Mallet-Prevost, submitted with The Counter Case of the United States of Venezuela in the Venezuela-British Guiana Boundary Arbitration, as quoted by Sandifer:

> "Some maps have a special significance quite distinct from that which may attach to them when considered as merely expressing the personal views of their authors: they are maps which bear some special relation to treaties; or which have been made the subject of comment by Governments in their diplomatic correspondence or State papers; or which have, in some measure, obtained the official sanction of interested Authorities ... On the other hand, maps perform the function of pictorially expressing the views of the

particular geographers or map makers who may have been instrumental in bringing about their publication. They furnish us, therefore, with the opinions of a particular class of experts; and the value of this kind of testimony depends largely upon the special circumstances of each case." (Sandifer, *op. cit.*, p. 157, note 83.)

On the value of maps published by Governments, India relies upon the following passage from Hyde, *International Law*, 1947:

"The cartographer officially employed to portray the political limits of a particular State is usually cognizant of their scope. His map may, therefore, be taken as the embodiment of the full extent of its territorial pretensions. Thus a map published by a State, or under its auspices, or purporting to reflect its position, and which it has been disposed to utilize as a means of publicly revealing its position, may be fairly accepted as establishing that when issued it represented what that State deemed the limits of its domain. Moreover, when a series of maps of such a kind, appearing within a few decades, tell the same story and depict substantially the same limits, the conclusion is justified that they mark a frontier beyond which the interested State cannot go without some fresh and definite and respectable process of acquisition, such as one embodied in a treaty of accession. Thus in the course of a boundary arbitration the most obvious function of an official map issued under the auspices of a particular litigant may be that of holding that litigant in leash. Arbitral tribunals have perceived the point, and dwelt upon it. The Judicial Committee of the Privy Council did so, in substance, in the course of its opinion, in 1927, in the Canada-Newfoundland Boundary Dispute in the Labrador Peninsula. After discussing a number of maps it said:

'The maps here referred to, even when issued or accepted by departments of the Canadian Government, cannot be treated as admissions binding on that Government; for even if such an admission could be effectively made, the departments concerned are not shown to have had any authority to make it. But the fact that throughout a long series of years, and until the present dispute arose, all the maps issued in Canada either supported or were consistent with the claim now put forward by Newfoundland, is of some value as showing the construction put upon the Orders in Council and statutes by persons of authority and by the general public in the Dominion'. (*Op. cit.*, p. 496.)

India quotes the following passage from the Preah Vihear Case in support of the argument that the plea of error in the maps of the Survey of India which show boundaries is not available since the maps were seen by all authorities, from the Secretary of State to the Commissioner in Sind and no objection was raised thereto:

"It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent if the party advancing it contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error" (Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: *I.C.J. Reports 1962*, p. 26.)

India says that the same principle of law was enunciated in the Case concerning Sovereignty over certain Frontier Land (Belgium v. Netherlands).

The conclusion of India is that there are no "flat rules" one way or the other in this matter and that "all depends on the circumstances of a particular case". One point only emerges "perhaps as some kind of basic line" and it is that:

"... maps may be hearsay and maps may not be hearsay. Maps which are not hearsay are those maps which are drawn by the authorised persons, on the ground, by an inspection on the place, by being there and making the necessary enquiries, and then putting it down on paper. This is not hearsay. Hearsay may be maps derived from information, from books and something ... in order roughly to show what the position is." (Verbatim Records, p. 12993.)

(*d*) India argues that "a key to the understanding of the maps" is that "[t]here is no democracy... in the world of maps... all maps are not equal; they are not equal in point of significance, in point of weight or in point of accuracy". One has to "look at the various maps having regard to their authenticity, the purpose they were intended to serve, their historic importance, and the degree of accuracy and of finishing which each map discloses, because then alone can [one] evaluate each map correctly and precisely and attach the necessary weight when [one] comes to compare one map with another." (Verbatim Records, pp. 1537–8 and 1545.) "You have, on the one hand, maps by the surveyors officially deputed. They are what may be called official maps; and, on the other hand, maps by certain individuals such as travellers, and by persons like those of the Quarter Master-General's Department who were more concerned with routes, possible ways for the Army in an eventuality and looking at it from a purely military standpoint." (Verbatim Records, pp. 12982–3.) For the question of boundary between Kutch and Sind, the survey maps alone accurately represent the facts regarding the boundary. Prior to the scientific survey of the territory, individuals who penetrated into Sind made maps.

(*e*) Pakistan seeks to establish the authenticity of the unofficial "pre-survey" maps by pointing out that India relied upon unofficial maps in its negotiations with China. In this connection, Pakistan referred to the publication of the Ministry of External Affairs, Government of India which has been quoted above.

India's reply is that in that case there was, in the absence of survey maps, a question of balancing one kind of map as against another kind, but that in the present case there are official maps of the surveyors on the one hand and unofficial maps on the other. Moreover, the Indian Government emphasised that the maps relied upon during the negotiations with China, though unofficial, were scientific maps.

(*f*) India also introduces one further aspect of the question, namely that of the origin of a map in relation to the author's interest in improving a particular case. India mentions maps made by China for the sole purpose of showing a particular territory as being within China.

In this respect the Islands of Palmas Case was referred to and the Award of Judge Huber was quoted:

> "Above all, then, official or semi-official maps... would be of special interest in cases where they do not assert the sovereignty of the country of which the Government has caused them to be issued." (Island of Palmas Case, *United Nations Reports of International Arbitral Awards*, Vol. II., p. 831, at p. 852.)

Counsel for India concludes by saying that "if one is making a map for the purpose of asserting one's sovereignty over a particular territory, of course it is of no value as such. But if it is made regardless of any dispute and regardless of any such assertion, in the ordinary course of things, then... 'official or semi-official maps' are of value as evidence." (Verbatim Records, p. 13002.)

2. *The Authority of the Survey of India*

From the outset India relied heavily on maps, and more particularly on maps issued by the Survey of India. In its Memorial appear two chapters on maps entitled, respectively, "Depiction of Sind in Maps" and "Depiction of Kutch in Maps" where the maps annexed to the Memorial are introduced. The annexed

maps are practically all products of the Survey of India, be it that they were produced by survey parties which surveyed the area in the field, or that they were compiled from such maps in the offices of the Survey Department.

Pakistan's Memorial mentions the Survey of India when stating that during the Sind Revenue Survey, the first survey of Sind, portions of Sind were left unsurveyed. These portions

> "could not by that omission, or by the fact of their being subsequently surveyed along with other teritories (some of which belonged to Kutch), be converted into anything other than Sind. Nevertheless the Survey of India in other maps, without any authority in that behalf, incorrectly showed the area of Sind left out of the Sind Revenues Survey, as being outside Sind, and again without any authority, subsequently put symbols of higher and higher status on the Lines shown as the boundary till it was ultimately shown as the provincial boundary." (Pakistan Memorial, Annex F, p. 41.)

In its Counter-Memorial, Pakistan elaborates its attitude on the work of the Survey of India by stating:

> "It is submitted that maps are only cartographical depiction of what the surveyor can physically observe. In the region in question, the observed topographical features that used to separate the Rann from lands of the lower delta having disappeared, the surveyors of the 19th and 20th century, could observe no boundary. All that they could physically observe was a shore in the north, which was well-defined up to a certain distance in the west; a shore in the east which was well defined; and a shore in the south which was well defined. In the west, there was nothing to mark any abrupt change between that which was the Rann and that which was not the Rann. Any boundary in that region in the west, therefore, had perforce to be an arbitrary notional line, and not a natural feature constituting a physical boundary. Such a boundary could only be placed by an authority competent to dispose of questions relating to territorial sovereignty. No disposition of sovereign rights having taken place, there was no text which the surveyor was called upon to interpret or to follow. The intrinsic indications of the random nature of the depiction of boundaries in this region have been brought out in Annex J. Once having been depicted, the arbitrary boundaries were copied in most of the subsequent maps. It is submitted that a repetition of an error continues to remain an error and does not, by being repeated, lose its character of being erroneous.
>
> "The Department of Survey of India has all along been careful to point out that maps are not conclusive as to the question of boundaries... That caution is nowhere more necessary than in relation to a region where the surveyor has no boundary to observe, either natural or artificial." (Pakistan Counter-Memorial, para. 158.)

In corroboration of the last point Pakistan refers to a Note on the survey of boundaries which was sent as an enclosure to a letter from Major G. H. Osmaston, Superintendent of the Survey of India, to the Collector of Thar Parkar District on 19 May 1938 which states:

> "This Note is intended to ensure that no handle for raising disputes should be afforded during the course of surveys by the Survey of India Department of the Government of India.
>
> "1. The Survey of India is concerned with the production of a series of topographical maps covering the whole of India, including British India and the Indian States. The purpose of these maps, of which the largest scale is 1 inch to a mile, is that of general utility.
>
> "2. Surveys are generally carried out by areas limited by the edges of published map sheets or by the dividing line between differing scales of survey as decided by the Surveyor General of India.
>
> "3. Topographical surveys are not concerned with boundaries except in so far as demarcated boundaries are surveyed in the same way as other features of a map with a view to making the map as complete as possible.

"4. Where a boundary is not demarcated, the lack of demarcation on the ground is indicated on the map by a special symbol. Where a boundary is in dispute and is not demarcated it is customary to show the alternative alignments; no such boundary lines need however be shown on the maps in any way whatsoever if either side wishes them to be omitted, though the area in which the disputed boundary lies will be surveyed. Any such disputed area will be marked as 'Disputed' on the map, or in a footnote.

"5. The topographical maps of the Survey of India are not authoritative as regards the alignment of fiscal boundaries, they can however be used as evidence in the sense that they portray the features of the ground, including existing boundary marks (where surveyed), as accurately as the scale permits.

"6. Survey personnel are instructed not to have dealings with local motamids, except for the purpose of having the permanent and accepted demarcation marks of boundaries pointed out to them." (Pak. Doc. B.110.)

Pakistan stresses points 3 and 5 of this Note.

As India, in its opening statement, reiterated its reliance on maps, particularly on maps issued by the Survey of India, Pakistan also repeated its criticism of this Indian position in its answer. The criticism started with the submission:

"In the Memorial of India, specific and great reliance was placed on these maps and, as is evident from the oral submissions made on behalf of India, maps represent the first plank, the second, third and fourth planks and continue to be the last plank of the Indian case. Their case is based on maps, more maps and still more maps, aided by the Administration Reports, statements in Gazetteers and warrants of title given by Lieutenant Raikes and Captain Grant." (Verbatim Records, p. 5979.)

The two main objects of the criticism appear to be the following:

(*a*) The working habits of the survey were not as one would expect them to be; this is best illustrated by the incident during Osmaston's Survey when, according to India, the word "disputed" was printed on some maps in the wrong place. Counsel for Pakistan states:

"The incident actually highlights and brings out the confusion that has been caused, in respect of this boundary. Unfortunately, at various stages, through various causes, further and greater confusions have been caused, and here is one very important example, and an illustration of the kind of thing that keeps happening. The Survey of India Department, with great respect to the representatives of both its successors on either side, does not come out in a very good light. They are sensitive on the point, but I do not think the Survey of India Department comes out very well." (Verbatim Records, p. 7227.)

(*b*) The Survey of India depicted boundaries without the necessary authority for doing so, while India seems to consider that the Survey Department had such authority itself. India says for instance that "the territory of Sind was for the first time determined by a systematic and scientific survey..." (Indian Counter-Memorial, para. 20). Counsel for Pakistan comments:

"That sentence is important as forming the basis of the Indian approach to the problem, that is, that the survey determines territories. The territory of Sind was for the first time determined by a survey. The error in that assumption, if I may say so with respect, is that the territory is a matter of sovereign rights and has nothing to do with what the surveyors conduct as their operations. It is that assumption underlying this paragraph which I submit is fallacious." (Verbatim Records, p. 5328.)

Referring to the Note of Osmaston quoted above (Pak. Doc. B.110), India points out that this Note was originally prepared by Colonel C. G. Lewis, Director, Geodetic Branch, Survey of India, in respect of surveys in Indian States and approval thereto was obtained by him from the Agents to the Governor-

General in the States of Western India and in Rajputana. The Note commenced with the following sentence:

> "In consultation with the Hon'ble the Agent to the Governor General in the States of Western India [and in Rajputana], the following Note relating to topographical surveys in Indian States is issued for the guidance of all concerned."

This Note went to Osmaston because he was concerned with the survey of the States of Western India and Rajputana. As it was to go to a large number of Indian States, it was cyclostyled but in so doing the first sentence was omitted. The Note went to the Collector of Thar Parkar also either through mistake or for information. It was in fact intended for the Indian States only. The Government of India had no right to survey the Indian States and they could do so only with the consent of the Indian States. The Survey of India was concerned with the topographical survey of the Indian States and not with the internal fiscal boundaries. So far as the fiscal boundaries were concerned, the Note assured the Indian States that the Survey of India maps would not be authoritative as regards the alignment of the fiscal boundaries, which was the exclusive concern of the Indian States. This assurance was given so that the Indian States might not refuse permission out of fear that the Survey of India would draw fiscal boundaries which might become authoritative. The reference was not to political boundaries of the Indian States. The Note made clear that the surveys would not be concerned with boundaries except insofar as demarcated boundaries were surveyed, that if the boundary was in dispute it would be marked "disputed". If the boundary was not demarcated, the fact would be indicated by a special symbol. The Note has no bearing on surveys of British Indian districts conducted by the Survey Department.

Pakistan suggests that what was sent by Osmaston to Thar Parkar (Pak. Doc. B.110) might be the original note. The Note of Colonel Lewis produced by India (Ind. Doc. TA 38) might be an adaptation for Indian States. Pakistan asked for the corresponding file of the Survey of India which was the issuing department (the file produced by India containing Ind. Doc. TA 38 was of the States of Western India and Rajputana Agency). The corresponding file asked for was not produced but another file was produced by India from an examination of which it was seen that "Notes" identical with Pakistan Document B.110 had been issued to Indian States, Collectors of British districts and other officials.

In its reply India dealt at some length with the above arguments. Counsel for India submits:

> "... whereas maps are not the only and exclusive plank of India's case, in any event – even assuming they were so, which they are not – the case would certainly be very well founded. In other words, although a large number of historical documents support India's case ... if you assume someone had to decide this dispute on the basis of maps, he would not go wrong." Besides, "... perhaps a case based on maps, more maps and still more maps may be better founded than a case based on conjectures, more conjectures and still more conjectures". (Verbatim Records, pp. 13074 and 13080.)
>
> "If you have to decide this dispute on the basis of the reliable and authentic maps which are before you, if you evaluated them, discarded the bad ones and concentrated on the good ones, then I venture to submit that one would not go wrong in drawing the boundary based on these maps." (Verbatim Records, p. 13081.)
>
> "... the work of the Survey of India Department was done by human beings and not by archangels; one must therefore accept some margin of human error which is unavoid-

able in anything which human beings do. However, it is a long step from making that statement to the statement that the Survey of India Department comes out in a very poor light when its work is examined." (Verbatim Records, p. 13112.)

On the Survey of India as an institution, India submits a book entitled *Survey of India General Report* (1936), and presents its history and functions with reference to it. The Survey was created in 1767. In the beginning, it had three Surveyors-General at its head, one for each of the three Presidencies of Bombay, Madras and Bengal. In 1814, the three offices were abolished and one Surveyor-General for the whole of India was appointed. In 1878, the three branches into which the institution was divided, the Great Trigonometrical, the Topographical and the Revenue Branches, were amalgamated.

Through all this change, the Survey of India served the same purpose as that defined at the outset by Clive, the Governor of Bengal, who wrote to the Directors of the East Indian Company on the appointment of the first Surveyor-General in 1767: "So much depends upon accurate surveys, both in military operations and in coming at a true knowledge of the value of your possessions ...". India says:

"... what the people who conceived of this Survey of India Department and brought the Department into existence had in mind was not the survey of a Deh, not the boundary of a village, and not a revenue settlement; what they had in mind was a Survey Department which would give results and produce documents which would be useful in military operations and which would lead to a true knowledge of the British possessions. This is the key to working, the function, the authority and duties of the Survey Department." (Verbatim Records, p. 13082.)

Another book, Phillimore, *Historical Records – Survey of India* (Vol. III, 1954), was quoted on the duties of the first sole Surveyor-General of India in 1815. It says:

"When authorising the establishment of a simple Surveyor General of India, the Directors laid down as his main duties the compilation of large scale maps of all parts of India from the best available surveys, and the maintenance from this of a general map of India on reduced scale... He was to be the sole authority for such maps, and was responsible that copies were only made for authorised persons and not unduly multiplied." (*Op. cit.*, p. 294.)

From this definition of duties, India deduces that the Survey of India had the authority to draw boundaries. Counsel for India states:

"Here also you might have noticed the words which make it clear that the idea is to have a General Map of India on a reduced scale. You can have a General Map of India on a reduced scale if your Survey Department has authority to draw a boundary between British India and the Indian States. If your Survey Department has no such authority then a General Map of India showing British India and non-British India becomes an impossibility." (Verbatim Records, p. 13083.)

The three branches of the Survey, before their amalgamation in 1878, collaborated closely and carried out joint surveys for reasons of economy. The above mentioned General Report, dealing with the Revenue Branch says:

"In the past this Department used to carry out the large scale revenue surveys for most of India, and was still conducting this work for Central and Eastern India and Burma in 1905. Though revenue survey is primarily a record of individual property boundaries and is unconcerned with the surface features, ground levels and exact geographical position essential to a topographical survey, it was on the whole found economical to carry out both surveys together."

Such was the case with Macdonald's *Survey of Sind in 1855-70.* Here the revenue aspects and the topographical aspects are combined in the same survey.

The surveyors were instructed to take special care in surveying boundaries. The *Handbook of Topography*, issued by the Survey Department, has in its 1913 edition (Pak. Book 90/7) the following marginal note:

> "The survey of boundaries requires special care on the part of the surveyor and of his camp officer and no field section should be passed until the boundaries have been carefully checked in the field by an officer and compared by him with existing maps and descriptions. It must be remembered that it is more important that the boundary should be correct with regard to the topography of any map than that it should be strictly in position with regard to the graticule. In the case of boundaries which follow fiscal limits which have been already surveyed for revenue purposes, the alignment of the boundary as it appears on the reductions of the cadastral maps may be accepted after the surveyor has satisfied himself by testing it at occasional points, that its geographical position is correct. When, however, a boundary follows a natural feature such as ridge or stream, and which has not been so surveyed, the surveyor must carefully survey the boundary throughout its length. When any part of a boundary consists of a straight line between two points, both the points must be visited and carefully fixed: when it consists of any other arbitrary alignment the local authorities should be asked to point it out to the surveyor, and, if in jungle, to clear it." (*Op. cit.*, pp. 36–37.)

Various circulars to the same effect were issued by the Survey of India (*vide* for instance Ind. Doc. TC 65, p. 57).

This was clear, so to say, from the outset. One could read, for instance, in a despatch from the Court of Directors to the Governor-General in Council at Fort William in Bengal dated 3 June 1814:

> "A Surveyor General of India, open to selection from the three Presidencies, to be appointed and stationed at the Presidency of Fort William. The Duty of this Officer will be, not to conduct surveys himself, but to receive and appreciate the Surveys made by others, to arrange the materials existing, or which may hereafter be procured and, after selecting the best, and reducing them to one uniform scale, to frame from these materials Maps of Provinces, or of Divisions, comprehending a certain extent in Latitude and Longitude... A General Map of India to be carried on at the same time, of which the foregoing separate maps will constitute the foundation..." (Ind. Doc. TA 28.)

Counsel for India concludes:

> "What I am endeavouring to make clear is that throughout the two hundred years' history of the Survey Department from 1767 onwards, from the inception the idea has been that maps should be given which would show the boundaries of the various possessions, Provinces, Divisions and so on which would be founded on a general map of India. In short, the drawing of the political boundaries of Divisions, Provinces and British possessions has been the function of the Survey Department since its inception two hundred years ago." (Verbatim Records, pp. 13133.)

The Survey of India accomplished its tasks to general satisfaction. India says: "The people who employed them – The Secretary of State, the Governor-General in Council – were very satisfied with their work." A high-powered committee, one of whose members was nominated by the highest authority, the Secretary of State in London, wrote in its Report for 1904–05:

> "Of the general accuracy of the maps provided by the Survey Department, apart from their not being up to date, there can be no question. We have received the most conclusive evidence on this point from all sides. Generally speaking, the accuracy of the survey is regarded as above all suspicion; and no comparison is possible in this respect, or is anywhere attempted, between the work done by the professional department and by any other agency."

India concludes on this point:

> "... it is a department of which the two heirs, the Survey Department of Pakistan and the Survey Department of India, may be justly proud; and to speak against this Department – apart from pointing out, say, an inaccuracy or an error here or there, which is unavoidable in any human work – to denigrate them generally as a useless lot of men would be like maligning one's own ancestors". (Verbatim Records, p. 13113.)

A few points in the argument of Pakistan need clarification, India continues. To Pakistan's argument that the Indian approach is that the survey "determines" territories, India replies that the word "determine" is of ambiguous import and, in the context of maps and surveys, is used in the sense of presenting pictorially, giving objective expression to an existing fact. It is not used in

> "... the sense in which it can be said that a judicial authority or a court determines a dispute between two parties, one of whom says that a certain field belongs to him, and another makes a claim to the same field. The Survey Department was not a boundary commission hearing judicial disputes between various parties and giving its own decision binding on both. For example, if there were a dispute between the Hyderabad State and the Madras Presidency, it is not suggested that the two rival claims had to go to the Surveyor General and the Surveyor General would take evidence, hear arguments and then come to a final decision one way or the other as to who is right and who is wrong. That is not the sense in which the word 'determine' is used ... checks and counter-checks are provided to ensure that what they determine is an accurate pictorial representation of an existing fact ... when there are differences and disputes the Surveyor General and his officers are told to refer them to an appropriate authority. For example, in some cases you are told 'Refer it to the Provincial Government'. In other cases you are told 'Refer it to the Government of India'." (Verbatim Records, pp. 13114/20–21.)

But in another sense of the word "determine" the Survey had to "determine" a boundary and could not do otherwise. Counsel for India states:

> "The value [of these maps] lies in this, that the British Government, whose successor Pakistan is, had its own Department determine what its own boundary was, and accepted that without demur as the correct boundary. The Survey of India Department did not have its own *ipse dixit;* it did not say 'because I say so, it is so'. In fact, they did not create a boundary; they had access to the historical records, to the existing surveys and maps such as they were, to local information, to official knowledge. For example, the local officials knew what their jurisdiction and area of their jurisdiction were. These basic sources of information are open to the Department. On those sources the Survey Department draws the line, and the parties accept that as correct ... I would submit that to say they had no authority to draw the boundary, as Pakistan has suggested, would be the same as saying that a painter has no right to determine what your profile is. How does he do his work? It is of the essence of his work that he must show the profile. It is of the essence of the work of the Survey Department that they must show the boundaries." (Verbatim Records, pp. 13122–3.)

> "The work of administration of a sub-continent like India would have been just impossible if no political boundaries were drawn ... not only was the Survey of India authorised to draw these political boundaries, but it was its duty to draw them. If the boundaries had not been drawn, the Survey of India Department would not have done its task. Not only was it the authority and the duty of the Survey of India Department to draw these boundaries but, as I shall show when I read these various extracts, it was the only authority which could do so. No other authority in India had the right to show on a map authoritatively the boundaries of the various Provinces, Divisions or Sub-Divisions. This was the only Department of the Government of India which had the requisite authority. It spoke with authority, the authority of the Government of India. It was a Department of the Government of India, not a private agency. It was a Department of the Government of India. It is not even a separate corporation; it is a part and parcel of the Government of India. If what the Survey Department says is to be rejected,

one may as well reject what the Political Secretary says, what the Secretary of the Foreign Department says, what the Secretary of the Home Department says. One can reject them all, because what does the Secretary say? When he speaks, he speaks as a part of the Government, he says something which gives an idea of what the Government thought were the limits of its territories and jurisdiction. The Survey of India Department is a part and parcel of the Government. It is a Department of the Government, and the maps are therefore published by the Survey Department as a Department of the Government of India. If this cannot give it authority in fact, it would be impossible to conceive in what other way, under our manner of administration, authority can be conferred upon this Department to draw the boundaries." (Verbatim Records, pp. 13124–25/30.)

"...the Survey Department had the authority to depict the political boundary of British India so as to distinguish British India from Indian States. It did the job, it did it accurately. The various authorities, which have been enumerated one hundred and five times, all accepted the depiction of the boundary, the delineation of this political frontier as correct, and what we are asking this Tribunal to hold is that what has been accepted by my learned friend's predecessor in title is the correct position against which there is no authentic, reliable evidence and it is binding on my learned friends, as it would have been binding on the British Government itself if it were today disputing the claim of Kutch to the Rann of Kutch." (Verbatim Records, p. 13424.)

On a consideration of the Report of the Indian Survey Committee 1904–05, the Government of India observed:

"The Governor General in Council considers that the principal duty of the Survey of India must be held to be the provision and maintenance of accurate, up-to-date topographical maps, containing all that is necessary for the purposes of the general administration, and especially all that is required for military purposes."

India sums up as follows:

"It is not right to ask who gave them the authority to draw the boundaries, because if they did not have that authority how would the General Administration or military machine carry on?... The function of the Survey of India has been described as to produce maps for general purposes of administration and for military purposes." (Verbatim Records, pp. 13191–92.)

"Boundaries are sacred things. The suggestion that a Surveyor could just throw a toss and say 'I give it to Sind' is not borne out by historical records. No surveyor had it in his power to give areas or shift boundaries at his will. He had to go by the historical weight of the evidence. He had to go by the demarcation in the field and by the thakbust and other documents..., ensuring accuracy and possession of the boundaries. It does not matter if there is a delay, says Thuillier; the delay will be excused, but they should make sure that the boundaries are correct." (Verbatim Records, p. 13141.)

"The only Department of the Government which could put out to the world maps showing the limits of the border of British India was the Survey of India Department." (Verbatim Records, p. 13131.)

Pakistan replies that if there is something existing the surveyor can put it on the map; if it does not exist the surveyor has no authority to put in an imaginary boundary. The determination of the boundary has to be by some competent authority; the surveyor can only depict what exists. Pakistan submits that that point is fully conceded by the apt illustration of the photographer. But having fully conceded that point and having stated that the surveyor, like a photographer, can make a picture of that which exists and cannot make a picture of that which does not exist, the argument proceeds further and creates an imaginary hurdle by the use of that word "determine", in the sense of "draw on the map"; and from that spurious meaning the proposition submitted by Pakistan is transformed into a different proposition – that the Survey of India had no

authority to depict boundaries on their maps. That is not what Pakistan is saying. On the contrary, Pakistan has gone elaborately into the details of how boundaries are to be drawn and depicted by the Survey Department and of what its obligations, functions and duties are. It is the duty of the Survey Department to put down, either in history sheets or boundary sheets or in files, the exact authority under and by which a particular boundary has been established, ascertained or notified, and their own function of survey of that boundary as a boundary. It has never been Pakistan's case that the Survey Department is not authorised to draw boundaries. On the contrary, Pakistan has insisted that it is their function and their duty and that they have to discharge their duty properly. India has said that the Surveyor-General may make a rule that a particular map is itself the authority for the definition of that which is depicted in it. That rule then becomes binding on all concerned as if it were law. However, no attempt to justify how the Surveyor-General can lay down rules binding on all has been made. Nevertheless, it is asserted and taken for granted.

3. *The Distribution of Maps*

India has produced evidence to show that the different maps issued by the Survey of India in various series were circulated for nearly a century to the whole spectrum of the Government, including the Secretary of State, the Governor-General, the Provincial Governments, Commissioners of Division, Collectors, Magistrates, etc. The object of producing this evidence is to demonstrate that there cannot have been any confusion or error in these maps with such widespread distribution over decades of various maps of different categories.

The evidence consists of correspondence between the Surveyor-General of India and the Government of India, on the one hand, and the Government of India and the Secretary of State, on the other, and notes in the India Office relating to despatch of the maps and scrutiny thereof in the India Office, standing orders for distribution of the maps, Reports of Macdonald and Publication Instruction regarding Osmaston's sheets.

(*a*) Correspondence between the Government of India and Secretary of State and notes in the India Office: This correspondence relates to the years 1871 to 1883. In 1871, the Surveyor-General of India submitted to the Government of India a new edition of the *Catalogue of Maps published by the Survey Department* as well as two cases of maps and plans issued in India from the results of surveys in progress. The Catalogue and the cases were forwarded by the Government of India to the Secretary of State. The list of maps and plans sent in the two cases includes Indian Map B-2, Sheet 96, of Macdonald's Survey (Ind. Doc. TA 79A). On receipt of the cases, there is a note in the India Office, *inter alia,* appreciating the delineation of sand ridges on the sheets of the Sind Survey and stating that the maps would be spread out in the Map Room for the next few days for inspection of the Members of the Council (Ind. Doc. TA 80).

In January 1872, the Surveyor-General of India sent another case of maps comprising an aggregate of 3,590 sheets and suggested that he would in future be despatching the maps regularly every quarter. The case was transmitted by the Government of India to the India Office with the intimation that the Surveyor-General of India would be making quarterly despatches. The Secretary

of State personally approved this arrangement and observed that these maps "are likely to be frequently consulted" and contemplated a rearrangement of the drawers in the Map Room. The list of maps sent includes Indian Map B-2, Sheets 92, 93, 94, 95 and 97 of Macdonald's Survey (Ind. Doc. TA 81).

The maps despatched in July 1872 included Atlas Sheet 11 NW, Indian Map TB-26 (Ind. Doc. TA 81). The maps sent in January 1873 included Indian Map B-2, Sheet 91 (Ind. Doc. TA 82). The maps transmitted in April 1873 included Atlas Sheet 11 NE, Indian Map TB-27. The maps sent in July 1873 included Atlas Sheet 11 SW, and a map corresponding to Indian Map B-6 (Ind. Doc. TA 82).

India emphasises that in the course of this correspondence all the relevant sheets of Macdonald's Survey (Ind. Map B-2 Series), and all the atlas sheets were made available to the Secretary of State.

In 1883, the Secretary of State directed, in instructions to the Governor-General of India, that measures be taken to ensure the regular transmission of a sufficient number of copies of all official publications. In accordance with this despatch, the Government of India issued instructions to the local Governments and administrations that, even though some published works including maps were kept outside the purview of Act XXV of 1867 (Press and Registration of Books Act), those works should be regularly transmitted provided they were of special interest or utility (Ind. Doc. TA 83).

Indian Document TC 79, *A Review of the Boundary Symbols* by Captain Tandy, 1913, shows that ten copies of one inch and smaller scale maps were being sent to the India Office regularly.

(*b*) Standing Orders regarding Distribution of Maps: In 1850, the Survey of India had issued orders that a facsimile purgana map on the same scale as that lodged in the Survey of India Office should be furnished to the civil authorities (Ind. Doc. TA 31). In 1891, instructions were issued that in order that the published maps of the Survey of India might be utilised to the greatest possible extent, the executive officers should intimate to the Map Record and Issue Office the names and addresses of all officials to whom the maps were likely to be useful (Pak. Book 90.2).

The Office Manual of the Map Record and Issue Office, 1924, contains a List of Officers and others registered for supply of maps. This list includes Secretaries to the Government of India in the Foreign and Political Department and the Revenue Department, the Secretaries of the Local Governments, Chief Engineers, including the Chief Engineer of Bombay, Commissioners of Divisions, Deputy Commissioners, Magistrates, Collectors, Political Officers as well as War Office, London, and several learned societies and libraries in England as well as in other countries (Ind. Doc. TC 80). The 1939 Edition of that Office Manual also contains a similar list of officers and others who were registered for supply of maps. Sind had become a separate province by this time and the Government of Sind is included in the list in addition to those mentioned in the 1924 Edition; the Inspector Generals of Police of the various provinces, including Sind are also mentioned in the List (Ind. Doc. TC 81).

(*c*) Macdonald's Reports: India has referred to Macdonald's Reports for 1866–67, 1867–68, 1868–69, 1869–70 (Ind. Docs. TA 53, TA 54, TA 55 and TA 56) and points out that copies of general maps, congregated village plans, standard sheets, etc., were sent to the Collector of the district concerned. This reference is intended, according to India, to show that the suggestions of Pakistan that the Collector as an indentor received only Pakistan Maps 57 to 65 is incorrect and the Collector received all those maps including the Indian Map B-2 Series, which is the most important.

(*d*) Publication Instructions about Osmaston's sheets: Publication Instructions regarding Osmaston's Sheets Nos. 40 L/SW, 40 L/SE and 40 L/NE (Ind. Maps B-33 to B-35) are at Indian Document TA 84. They show that copies of the sheets were to be sent to the Collector of Thar Parkar as well as the Kutch and Wav States.

India sums up by saying that the maps had a very wide official circulation; they went to the Secretary of State, the Government of India, the Provincial Governments, the Collectors concerned, the Deputy Collectors, Mukhtiarkars, Magistrates, etc., to learned societies as well as to military forces. All this shows that the British Government held out these maps as the maps put out to the world with their imprimatur, with their official sanction, and the pictorial representations made in the maps are therefore to be regarded as made by the British Government, binding the British Government and their successors-in-title. These are not maps with boundaries put by unauthorised persons.

Pakistan replies that the purport of the evidence produced by India regarding distribution of maps is that maps were sent to different departments, different offices, to outside countries and so on. They were distributed and were sent for record purposes to various places with which the Survey Department had arrangements concerning the exchange of documents. They do not become any more accurate or more correct by being so sent. If there are errors in them, one can go on sending them all over the world and the errors will still remain; their status remains what it was, their accuracy and errors remain. The circulation or distribution of maps does not affect that fact in any way. Pakistan has produced a large number of congregated village maps that were received in Sind. The boundaries on those maps are drawn with their different kinds of symbols: dash-dot-dash, dash-dash or just as a continuous black line.

4. *Pre-Survey Maps*

Sind was for the first time scientifically surveyed in the years 1855–70, and the first maps of this survey, concerned with the Rann of Kutch area, were published in 1871. Kutch was similarly surveyed in 1879–86, and the first maps from that survey were published in 1881. Surveys of portions of the Rann area were carried out again in 1904–05 and 1938–39.

This Section will deal with maps which are either prior to the maps produced as a result of these surveys, or are in their general shape uninfluenced by the survey maps.

For Pakistan, these "pre-survey" maps are of paramount importance, especially as evidencing the extent of the territory of Kutch at the date after which it

did not expand further (excepting 550 square miles), that is on 13 October 1819, when it became a vassal State under the British. India has only relied upon a few pre-survey maps (Ind. Maps 16A and B-46, B-54 and BB-5).

The pre-survey maps were prepared by authors of many different kinds: geographers, hydrographers, officers, administrators, etc.; some with famous names and others comparatively unknown. The maps were published by private firms, the East India Company, the Survey of India, etc., and have sometimes appeared in Gazetteers.

India describes the pre-survey maps as unscientific, as there was no scientific survey of the territory. Individuals who penetrated into Sind made maps. They went on travels and made maps of the kind annexed to their descriptions of travels into various hinterlands which they explored. They were pioneers. By local inquiry, partly by guess work and partly by taking measurements by pacing, they made maps annexed to their memoirs. India considers these old maps imperfect and incorrect, prepared on imperfect material, and points out serious discrepancies and grave errors in the maps relied upon by Pakistan. In short, one cannot construct a coherent picture of the Sind boundary by references to these crude maps. India says that although parts in the maps do support India, India is not placing reliance on these maps at all. As regards post-survey maps which are unaffected by the surveys, India explains that for reasons of economy old plates were used.

Pakistan admits many geographical inaccuracies in the pre-survey maps but states that they do not necessarily have any bearing on the general pictorial representation of the "established" or "locally recognised" boundary, or the nature of the Rann.

The oldest map exhibited by Pakistan is of 1788, by James Rennell, famous geographer and Surveyor-General of Bengal. (Pak. Map 106). It shows a "Great Sandy Desert", from Bickeneer over Thar Parkar and the Great Rann right towards the hills of Kutch. The word "Cutch" is spaced over the southern-most portion of that desert, to the south of the 24th parallel.

Pakistan demonstrates a Map of India arranged under the direction of Captain R. M. Grindley (Pak. Map 107). This map of 1842 depicts the whole Great Rann, including Pachham, Khadir and Banni, as belonging to Sind, and gave Pakistan the opportunity to state that it could have claimed the whole Rann, but that its claim nevertheless is confined to half the Rann.

Pakistan adds: There are a few other maps which likewise might indicate that the Great Rann of Kutch is more closely connected with Sind than with Kutch. Thus, in Pakistan Maps 2 (1822), 6 (1830) and 22 (1868), the mainland of Kutch is bounded off from the Rann by a coloured riband, while no signs of a boundary in case of Pakistan Maps 2 and 6 and no boundary riband in case of Pakistan Map 22 are shown along the northern edge of the Rann. In Pakistan Map 16 (1852), there is a dark heavy riband around the Kutch mainland and a pink wash in Sind (including the "delta lands in dispute" and the "upper lands in dispute") in contrast to the blue Rann, whereas at the northern edge of the Rann only the features of the edge seem to be depicted. More indifferent from the point of view now discussed is Pakistan Map 25 (1880), showing a yellow

riband around the Kutch mainland, but no boundary symbols on the Sind side or on the Kutch side, in contrast to the blue Rann.

India introduces Indian Map B-46 of 1878, published in the *Bombay Gazetteer 1880*, in which the main portion of the Rann for the first time unquestionably is shown as belonging to Kutch. This fact is also emphasised by Pakistan as contradicting the claimed historic title of Kutch. India also draws attention to some maps in which boundary symbols, either a continuous dark line or dot-dot symbols, have been added to the coloured riband on the Sind side. That is so in Pakistan Maps 7 (1831), 12 (1849), 13 (1850), 15 (1851), 24 (1874) and 140 (1820). (Pak. Maps 27 and 32 are dealt with in Section 10 of this Chapter).

As to Pakistan Map 24, Pakistan submits that the dot-dot symbols are the result of Macdonald's Survey, and that they have no counter-symbols on the Kutch side since Kutch had not yet been surveyed in 1874.

Most of the pre-survey maps have been introduced by Pakistan in order to show that the Rann was and is either a "separating or dividing entity", or itself a boundary or "belt of boundary", between coastal States. To this group of maps belong – besides Pakistan Maps 22, 25, 7, 12, 13, 15, 24 and 140, already mentioned – Pakistan Maps 9–11, 14, 18–21, 23, 26, 28–31, 33–34, 38, 136 and 138. In these maps Sind and Kutch are either represented in different colour washes or they are bounded off by coloured ribands. In between is the Rann, coloured either blue, white, or light brown, with the addition, sometimes, of swamp or marsh symbols. (As to the ribands in Pak. Map 20, see Official Records, 100th Meeting, para. 3.) Special attention was drawn to Pakistan Maps 140 (published in Walter Hamilton, *Geographical, Statistical, and Historical Description of Hindoostan and the Adjacent Countries*, 1820, Vol. 1), 9 (1842), 10 (1844), 25 (1880), 29 (1898), 30 (1902), 31 (1906), 138 (published in the *Imperial Gazetteer of 1908*), 33 (1909) and 34 (1912).

Pakistan Maps 3, 5, 8, 17 and 45 seem to be of little help for the purpose of describing the Rann as a separating entity between coastal States.

In direct support of its submission that the boundary between Sind and Kutch is situated in the middle of the Great Rann, Pakistan relies on Pakistan Maps 1 (1814) and 4 (1826). The first map shows "a notional line following a course slightly south of the 24th parallel". In the other a double coloured riband seems to follow the imaginary course of Luni River. The Claim Map of Pakistan (Map B) has been drawn up on the basis of Pakistan Map 4. The former course of Luni River is also to be seen in Pakistan Maps 2 (1822) and 15 (1851), the latter being a German map.

Reliance has been placed by Pakistan also on many maps in order to show that the Rann ought to be regarded as a "marine feature". In several maps, the Rann is marked as "swamp" or "marsh", but in the following it is depicted as a lake or a land-locked sea: Pakistan Maps 23, 25, 26, 29, 30, 31, 38, 136 and 138, possibly also 13, 14, 16, 21, 28 and 34. Pakistan Maps 21, 23, 25, 29–31 and 138, from 1865 to 1908, were published under the direction of the Surveyor-General of India and Pakistan Map 21 is signed by him.

India points out that all the remaining pre-survey maps show the Rann either

as a desert (Pak. Maps 1, 106, 130 and 139, from 1778 to a year prior to 1820) or as a swamp or a marsh.

Another purpose of Pakistan in introducing the maps referred to in this Section has been to demonstrate that the Sind territorial mainland indicated by coloured washes or in the case of a few maps by boundary symbols extended so as to cover "the delta lands in dispute" and "the upper lands in dispute" or portions of these lands, until confusion was created through misinterpretation of later surveys. This is the case in Pakistan Maps 3, 4 (?), 5–26, 28–30, 33–34, 38 and 138. The latest of these maps were Pakistan Maps 29 of 1898, 30 of 1902, 138 of 1908, 33 of 1909, 38 of 1909 (?) and 34 of 1912. India says again that many of these maps were prepared from standing plates for reasons of economy.

The Tribunal observes that amongst Pakistan's earlier maps, which were published after the appearance of the first survey maps in 1871, Pakistan Map 27 (the 1891 reprint of the Second Edition of the 32-mile map of India) depicts a boundary line drawn along "the vertical line", "the two loops" and the northern edge of the Rann (see Section 5 of this Chapter) as constituting some sort of an outer boundary of Sind, while Pakistan Maps 24, 25, 29 and 30 show either the vertical line or the two loops as lying within the Sind territory. These four maps were published under the direction of the Surveyor-General.

In this respect India relies on the original survey maps and the boundary alignment as it finally came to be established, for instance in the Fifth Edition (1915) of the 32-mile map and in the "Degrees Sheets" (see below) from 1921 and onwards.

In order to support its proposition that already at an early stage sovereign rights were exercised over the bets in the Rann, although the Rann still remained undivided and undefined, Pakistan relies upon the following maps in which bets in the Rann were given particular colours: Pakistan Maps 9–15, 18–26, 28–31, 34 and 38.

India points out in this connection that the Rao's personal holdings of lands, as depicted in Indian Map B-54 of 1855, included Dhara Banni, and Hieranto and Gainda Bets, shown as situated north of the 24th parallel, and extended in the north-west up to Allah Bund. Pakistan argues that this map is unreliable, as is apparent from the statement of Lumsden himself that the map had been prepared "without professional assistance" (Pak. Doc. B.124). The dependability of this map was also questioned in 1912 by the Commissioner in Sind (Ind. Doc. A-31, p. 222). Pakistan points out that this map is based on a list of villages prepared in 1842 by Malet, then Political Agent in Kutch, which list is described by Pakistan as "the most authentic available in this case". This list makes no mention of any Kutch village to the north of the 24th parallel.

India contends that the map is unreliable as far as boundaries are concerned but the map accurately distinguished the lands personally owned by the Rao as distinct from those beneficially owned by the Bhayad subject to the supremacy of the Rao.

A short discussion was devoted to Indian Map BB-5 of 1856. India underlines that Thar Parkar District there is bounded off from the Rann with a pink band, while Pakistan points out that this band does not represent a conterminous

boundary between Sind and Kutch. Conterminous boundaries are in that map indicated by double coloured ribands (see the outer boundaries of Thar Parkar towards Hyderbad, Omerkot and Rajputana).

Indian Maps TB-16(a) and TB-16(b) are relied upon by India to show that Wallassa was in a position different from that shown on the sketch of Frere (Pak. Map 109) on which Pakistan relies. India states that for the purpose of boundary as such, i.e., for defining the accurate boundary, India does not rely on Indian Maps TB-16(a), TB-16(b) and BB-5.

Lengthy discussions took place on the qualifications of the authors of the pre-survey maps. They can be summarised as follows:

(*a*) As stated above a Sind–Kutch boundary is shown in the middle of the Rann in Pakistan Maps 1 and 4.

Pakistan Map 1 was drawn by Henry Pottinger after his travels through the western area of Kutch and Sind, and was published in London in 1814. He was then a lieutenant in the Bombay Native Infantry. Pakistan says that the author of the map was an outstanding personality, soldier, diplomat and administrator, and at the end of his career, Lieut.-General and Governor of Madras (1848 -54); he was well acquainted with Kutch where he served at various times; he served also in Sind (as a Political Agent); yet, although the submitted map was made in 1814 while some of his connections with the area were later (he was Political Agent in Sind in 1836–40), "he had ample opportunity to say: this is not correct", yet he did not do so and it must therefore be assumed that Pottinger was throughout of the opinion which he had expressed pictorially.

India points to the inaccuracies in the map of Pottinger, specially the most evident ones – that not even the Rann of Kutch and the bets in it are shown, the alleged boundary line is a straight line drawn with a ruler, ending abruptly, and that Sindri which was unquestionably a part of Kutch is shown deep inside Sind. Pottinger prepared his map principally to show the routes followed by him and others. He had a limited vision and the various points lying outside these routes are mentioned by him in the map on hearsay and not on personal observation and actual survey. India submits that this map is the crudest map and a worthless one. It may be of interest as showing the routes and what he understood to be the surrounding country but for political purposes and the purposes of the decision of the Tribunal it has no value whatsoever. The British Government in the higher echelons never thought or spoke of any middle line as the boundary between Kutch and Sind. It may be that Pottinger subsequently rose to high positions at an advanced age but that is irrelevant for determining the accuracy of this map.

Pakistan submits that Pottinger was well acquainted with the region, and refers to the following passage from Shortt, Political Agent, Kutch, writing in 1865:

> "But during the subsequent 14 years' minority of the late Rao (i.e., 1820 to 1834], when the control of the Durbar interests and management of the Province were combined in the person of the British Resident (Colonel the late Sir H. Pottinger)..." (Pak. Doc. B.306.)

Pakistan argues therefrom that for these 14 years Pottinger was virtually the ruler of Kutch. He had ample time in this period to correct himself if he were aware that the Rann belonged to Kutch. Pottinger had a great sense of responsibility "to which his subsequent career gives eloquent testimony" and he is, for all these reasons, a "very reliable witness".

Pakistan concludes by saying that "[t]he inaccuracies of geographical detail that might be removed by a more scientific survey, however, have no bearing on the correctness or otherwise of the pictorial representation on a map, that a political boundary exists between the two States in the middle of a physical feature that separates the mainlands of those two States". (Pakistan Final Memorial, Annex Q, p. 79.)

Pakistan Map 4 was published in 1826 as a portion of a "Map of India". It shows, as the above-mentioned one, the Sind–Kutch boundary as running roughly half across the Rann.

The Indian Counter-Memorial points out that the Map is a compilation by a private agency and cannot be treated as authoritative or indeed of any value. Besides, India underlines inaccuracies such as the fact that prominent landmarks in the area, for instance Allah Bund, Sindri Lake, Rahim ki Bazar and Lakhpat, are not depicted in this map, and that the topographical features differ widely from those shown in the earlier and later maps.

India mentions also that this map does not agree with Pakistan Map 1.

Pakistan stresses that the particular value of the map is the fact that it was published soon after the date of the Treaty of 1819 and that it therefore may be considered as contemporary. It was prepared by a reputable company of cartographers, Charles Smith of London. It shows a point on the boundary – DAUBAUM (DROBANA) – which is independently proved to be on the boundary. This provides intrinsic evidence of the reliability of the boundary shown on this map.

(*b*) The map carrying a riband separating Kutch from the Rann, while no such boundary appears between the Rann and Sind, is signed by A. Arrowsmith, "Hydrographer to his Majesty the King", and dated 1822 (Pak. Map 2).

Counsel for Pakistan says about this map: Sind can be seen, though the map itself only confines Kutch with a riband. It might mean that the "Grand Western Rin" is included in Sind, but in any case it is excluded from Kutch.

An issue arose about the value of this map during which the publication entitled *Historical Records, Survey of India* by Colonel R. H. Phillimore, published in four volumes (Vol. I, 1945; Vol. II, 1950; Vol. III, 1954; and Vol. IV, 1958), cited above, was quoted by both sides. India says: The author quotes White as writing from Delhi in 1808 that Arrowsmith's map published in 1804 was "shamefully inaccurate" with respect to the country west of Delhi; he has also quoted Lambton as saying that "...it is mortifying to see so beautiful a map replete with errors"; elsewhere he says that the German geographer Klaproth described Arrowsmith as "the most ignorant of all those who are employed in constructing maps".

Pakistan, on the other hand, found the same Phillimore writing that "Arrowsmith ... as he had access to the geographical materials in the India House ...

availed himself of it with much success." The then Surveyor-General of India, John Hodgson, wrote: "I am preparing a map from the more recent surveys, which will diminish the value of Arrowsmith's map but for the time being Arrowsmith's map is the best available from the best materials."

(*c*) Of the maps that show the Rann as a separating entity, one group acquired a higher standing because produced by a well known geographer, John Walker. He bore the title of Geographer of the East India Company. His maps had, for this reason, at the time undoubtedly a great authority. Seven such maps were submitted to the Tribunal: Pakistan Maps 9, 10, 13, 14, 17, 18 and 19. They were published in 1842 -57. They are similar on the essential point, i.e., they all seem to show the Rann as outside both Sind and Kutch.

India stresses the circumstances that Walker never really surveyed the region and did not even visit it. It points to discrepancies between the maps, i.e., that some show the lake at Sindri while others do not, some show this lake as outside Sind, while others show it half in Sind and half outside. This difference appears in the two last maps although both are of the same year, 1857. The Luni River is shown in different maps on different spots. Pakistan Maps 13 and 14 completely omit Nagar Parkar.

Pakistan states that Walker was a geographer of great distinction, the founder of mapping in India. A book entitled *Memoir on Indian Surveys* by Clements R. Markham was quoted in which Walker is called "the veteran geographer of the East India Company", and where it is said that his work "places him in the first rank of the geographers of the present century". He worked for the East India Company and in the India Office for 48 years.

(*d*) A somewhat similar map (Pak. Map 7 of 1831) was relied upon by Pakistan because it emanated from a person famous in those days in the region which it depicted. He was Lieut. Alexander Burnes, at one time British Resident in Kutch. He is said to have been the first to conduct an actual survey of the area. "His survey", says Pakistan, "though there are errors of position, etc. in it, was regarded as an achievement at the time when he did it". Pakistan also says that "Burnes actually surveyed the Rann, only his instruments were not correct; it was as good a survey as he could make with his limited means and in the difficult terrain which the Rann is. It is not a very accurate survey but it is a survey". India denies to Burnes' survey any scientific character. In fact there was no survey; Burnes relied upon very imperfect and totally inadequate material as Holland, the Acting Quarter Master General, himself confirmed.

In conclusion, India points out that high administrative authorities considered all pre-survey maps inadequate when the question of an official survey was debated. Official correspondence was produced where maps by John Walker and two maps endorsed by the Quarter Master General's department in Bombay (Pak. Maps 5 and 8) were specifically mentioned.

In this context, India refers to a letter written to the Government of Bombay by Major J. Holland, Acting Quarter Master General of the Army, on 17 August 1844, in which it was said, *i.a.*:

> "The Commander in Chief desires me to take this opportunity... in order to prevent misconception, as well as injustice to this department, to explain that, the Map referred to from this Office was compiled from such materials as then existed, which in the

portion referred to consisted of little more than the march routes of the army of the Indus in 1839 and 1840, and that it was therefore necessarily most imperfect and incorrect, and that even now that much more material exists, and has been made use of, there is no doubt but that many and grave errors exist, as must be the case in every map which is not compiled on an accurate astronomical and trigonometrical basis, with the inferior triangles filled in from actual survey. If therefore this department were to wait until an accurate map could be furnished, the Commander in Chief needs hardly add, that it would probably be many years before it could produce one at all, but His Excellency considers it to be the duty of the Quarter Master General's Department to furnish from time to time the most accurate maps that the materials will admit of: such was the map of which Captain Baker complains and such only is the present, while it is hoped that others more complete and more accurate may yet from time [to time] be compiled in this office, as materials increase and former errors are rectified." (Ind. Doc. TA 9.)

The reference to the complaint by Captain Baker was explained in a marginal note on the document which read: "Stating that certain portions of the map of Scinde by Walker, and of one dated in 1841 by the Quarter Master General's department at Bombay are most incorrectly laid down".

India says that the author of this letter was himself the author of one of the maps mentioned as incorrect (Pak. Map 11).

India concludes that the criticism contained in this letter, although it is dated 1844, concerns also later maps because and insofar as they repeat the same errors as the maps previous to the letter. Therefore, Counsel for India does not place "reliance on these maps at all, although parts of the maps do support us because ...it is perhaps safer to go by the scientifically tested and authoritatively approved maps rather than those 'apologia' for maps". Pakistan points out that even if it is said that these pre-survey maps are not very accurate, such inaccuracy in scientific depiction cannot affect their unanimous evidence that the Khori River was the Sind boundary and that no trace of the so-called vertical line can be found anywhere.

India points out that each of the maps differs from the next one. The part to the west of the Khori River is sometimes included in the lake, e.g., in Pakistan Map 18. The colour riband has been shifted to the west of the lake in some of the maps. As regards the vertical line, India's arguments are fully set out in Chapter VIII.

5. *The Survey of Sind in 1855–70 (Macdonald)*

In the years 1855–70 a survey of the Province of Sind was carried out by professional surveyors of the Survey of India under the orders of the Government of India and on the request of the Commissioner in Sind.

Captain Donald Macdonald, Deputy Superintendent of Survey, was in charge of the survey and mapping during the last four years of this survey (1866–70). It was in this period that the area with which the present case is concerned was surveyed. For these reasons the survey of Sind in 1855–70 became known in the proceedings of the present case as Macdonald's Survey.

The Indian Memorial states the position of India with respect to this survey in the following terms:

"Some time after the conquest of Sind, a Revenue Survey of Sind was undertaken by the Survey of India. The survey was commenced during 1855–56 and completed during 1869–70. As a result of this survey, the Map of Sind was prepared in several sheets and

published by the Survey of India under the direction of the Surveyor-General of India. At that time Sind was divided into the three Collectorates of Karachi, Hyderabad and Sikarpoor and the two Political Superintendencies of the Upper Sind Frontier and the Thar and Parkar Districts... Sheets Nos. 91 to 97 [Ind. Maps] (B-2) represent the southern portion of Sind, namely, the southern portions of the Karachi Collectorate, the Hyderabad Collectorate and the Thar Parkar Political Superintendency. The provincial boundary is indicated in these Sheets by the symbol ·····; the limits of the Karachi Collectorate are shown in green riband, those of the Hyderabad Collectorate in yellow riband and those of the Thar and Parkar Political Superintendency in purple riband. These sheets show that the southern boundary of Sind runs roughly along the northern edge of the Rann.... In 1877, the Map of Sind was prepared in one sheet on the basis of the aforesaid survey. The Map [Ind. Map] (B-3) shows that no part of the Rann claimed by Pakistan was included in Sind." (Indian Memorial, para, 124.)

The remaining Sheet No. 79, showing in black and white the easternmost portion of the edge of the Rann, as surveyed by Macdonald, was exhibited by Pakistan in the course of the oral hearings (Pak. Map 137). The same boundary symbols as in the Indian Map B-2 Series were found along the edge. To this, Pakistan added, however, that the boundary symbols along the edge of the Rann were different in spacing and size from those indicating the political boundary between Sind and Jodhpur. India points out that Thuillier's *Chart of Symbols* (Pak. Doc. B.278) prescribed thick broken lines or thick dashes as a symbol for division boundaries and that this symbol is used in Pakistan Map 137 as well as in Indian Maps TB-17A and TB-17B to denote the boundary between Sind and Rajasthan exactly in the same way as along the northern edge of the Rann.

India continues: The Indian Map B-2 Series, and Pakistan Map 137, were the "authentic" maps, because they were published under the authority of the Surveyor-General of India. They used Thuillier's official boundary symbols for divisions and States (Pak. Doc. B.278), as did the Kutch Survey Party later in Indian Map B-47 and Pakistan Map 39. Macdonald must have received Thuillier's Chart not later than 15 November 1865. Macdonald's boundary line along the vertical line and the northern edge of the Rann was a conterminous Sind/Kutch boundary, authoritative for Sind, though not immediately binding for Kutch. since the Kutch authorities had not participated in the boundary survey. However, the formal consent from the Kutch side to the Macdonald line in its original or later versions was given in 1914 by approval of Indian Map B-44, except as regards the disputed portion, and during the survey of parts of Sind the 1937–38 (Osmaston's Survey). Thus, in his letter of 22 January 1938 to the Officer in charge of the Survey Party, the Survey Superintendent, Kutch State, wrote: "The Territorial Boundaries between Kutch and Thar Parkar Dist... runs as follows. The line begins at the trijunction of Karachi Dist. Hyderabad Dist., and Kutch and runs to Rahumkabazar, Mulkiaree along the line that is shown in the Trigonometrical sheets (the Survey of which was done in 1885–86) and the Sheet No. 40L and 40P in which the line marked in green colour which goes to the Trijunction of Jodhpur, Kutch and Wav." (Pak. Doc. B.23.) And shortly afterwards, on 5 March 1938, the Dewan of Kutch wrote to the Resident for the States of Western India, stating:

"The Survey Superintendent has returned from Nagar Parker and reports that as the representatives of Kutch, Sind and Wao did not agree to the alignment the Officer of the Survey party did not proceed with the survey work. The Sind representative is also reported to have claimed that half the Rann belonged to Sind. This has caused no small

surprise to the Darbar as the boundary between Sind and Kutch has already been determined and shown on the Topographical Survey Sheets. Again, the boundary dispute between the Bombay Govt. and Kutch Darbar was settled long ago, and boundary pillars were erected in 1924 where the boundary was disputed. The Darbar therefore consider that the present claim of the Sind authorities has no validity and there was never any doubt that the entire Rann belongs to Kutch." (Pak. Doc. B.167/Ind.)

India argues that Macdonald's Survey was not a rough revenue survey showing boundaries of settled or cultivated portions of villages only, as contended by Pakistan. The Commissioner in Sind was keen on having a topographical survey of the whole Province of Sind by the Survey of India, which would furnish a map showing on a large scale all boundaries down to the boundaries of villages, so that a good revenue survey founded on the topographical survey could be made. However, he felt it necessary to have a preliminary rough survey done by the Sind settlement organisation as a step precedent to a scientific topographical survey. He therefore directed that an enquiry into and demarcation of village boundaries be first made. He felt that this operation would also supply to some extent the want of a revenue survey and would be of great value to revenue officers till such time as a perfect topographical survey and a good revenue survey could be made. Accordingly, he circulated to the three Collectors of the province a set of rules, which he described as "Rules for a Rough Survey and Settlement in Sind". He also impressed upon the Surveyor-General of India "the urgent want of a good Topographical Survey of the Province" whereupon the survey of 1855–70 was undertaken by the Survey of India. This survey was distinct from the revenue survey carried out by the Sind officers although it also gave revenue details in addition to topographical details; in other words, it was a topographical-cum-revenue survey. It was called a revenue survey because a branch of the Punjab Revenue Survey was deputed to carry out the survey.

India also emphasises that Macdonald effectively did survey the whole of Sind, leaving no deserted or unsettled portions unsurveyed. In this respect India relies, *i.a.*: upon Macdonald's Report for the last survey season, 1869–70, where he stated: "The survey of Sind is now finished. I have received instructions to move up with my Division to take up the Survey of the Delhi and Hissar Divisions of the Punjaub." Furthermore, the "Indian Survey Committee", 1904–05, proposing new surveys, reported: "The whole of Sind was originally surveyed between 1855 and 1870 by a Revenue Survey party on the 4″, 2″ and 1″ scale. These surveys were published on the 1″ scale...". India furthermore quotes many Annual Reports of the surveyors themselves in order to show that not merely settled areas, but also uncultivated, barren wastes were surveyed, be it in the interior, be it on the periphery of the province.

India adds that Macdonald even went beyond the limits of Sind, when the State of Khairpur was surveyed. For technical reasons Macdonald also had to survey several "overlapping" areas, like the "Rann Sub-Circuit", including the Allah Bund. He also depicted the ruined fort of Kanjarkot. In 1850 a circular was issued to all revenue surveyors that "for the more perfect connection of Maps to all adjoining Districts when surveyed by different Parties, the positions of a few villages and all conspicuous objects and geographical items exterior of the Purgunnah and District Boundary, within a reasonable distance from it are to be laid down". In 1878, the Survey Department officially directed that

surveying should not stop at an administrative boundary, but should include "all villages, temples, or permanent objects adjoining or outside of the boundary of a topographical survey to be fixed so as to secure a good junction with the neighbouring map".

As regards Pakistan Maps 57 to 65, which do not show boundaries, India says that they are preparatory maps or maps made for a special purpose. No mention of these maps was made in the Reports of Macdonald. India relies upon the Volumes of Congregated Village Maps, signed by Macdonald, which show boundaries for the territory of Sind (Ind. Map BBB-Series). These maps were sent to the civil authorities, as the Annual Reports show. India has also exhibited two maps, Indian Maps TB-18 and TB-18(a), signed by Macdonald, which also show the political boundaries. India says that these maps establish that the boundaries were not laid down in the Indian Map B-2 Series by some unauthorised persons.

In order to explain how Macdonald came to draw the straight vertical line from the top of the Khori Creek to a point close to the village of Kirria, India refers to Macdonald's Report for the season 1868–69, dealing with the work in the relevant Jati Taluka of Shah Bunder District. There, it is said: "In Jatee the boundaries were all marked with stone, and agreed in the Thakbust Maps, which had been sketched in with plane tables and chaining. There were no disputed boundaries." India has also pointed out that the vertical line once seems to have tallied with some natural features. Reference was made to several of the produced maps. Some maps, like Indian Maps TB-8 and TB-9, seem furthermore to indicate geological differences between the regions to the east and west of the line. Historically, India contends, the vertical line could positively be traced back at least to 1837, as is evidenced by the following letter of W. H. Lucas, Commissioner in Sind, to the Secretary to the Government of Bombay, Political Department, dated 28 February 1910:

> "The authorities summarised in this statement [prepared in 1905 by Commissioner Morison] constitute a mass of evidence to the effect that since 1837, the boundary between Sind and Cutch, has been recognized and shown on all maps which have been prepared from that date to the present day, to be a straight line drawn due south from the trijunction of the Badin taluka of the Hyderabad district, the Jati taluka of the Karachi district and the Runn of Cutch to a point on the North bank of the Khori creek, east of the mosafirkhana at Kotri, and from that point the Khori creek until that creek joins the Arabian Sea.
>
> "The new trigonometrical survey maps prepared in 1904–05 also show the same boundary, and so does the map of the Bombay Presidency including Cutch contained in the official memoranda on Native States in India 1909. I have also obtained additional valuable evidence of the correctness of this boundary which has never before been questioned since the conquest of Sind in 1843.
>
> "Now, suddenly, the Rao of Cutch claims a slice of British territory the area of which is about 1000 square miles." (Ind. Doc. AA-10.)

Pakistan's case on Macdonald's Survey proceeds on different lines. According to Pakistan, the original maps produced by Macdonald do not purport to show the southern boundary of Sind, nor the Sind–Kutch border in relation to the Rann. The extent of the area surveyed by Macdonald was chalked out for him by the settlement officers in Sind. This is clear from the following observations made in 1863 by the Surveyor-General of India:

"The Civil or Settlement Department is solely responsible for the laying-down of the village boundaries, whilst it forms the duty of the professional Surveyor to see that his plans tally precisely with the Hudbust or demarcation maps made over to him for guidance; and unless he is fully provided with such guides prior to survey the accuracy of the boundary survey cannot be relied on." (Pak. Doc. B.355, p. 1.)

So far as the settlement operations were concerned, the position was that the British authorities in Sind were keen to organise the revenue administration in that province on rational lines. The previous rulers of Sind had made such frequent changes in revenue units that, at the time of the British conquest of Sind in 1843, the revenue administration was completely chaotic. Some of the land area of Sind in the south had also undergone topographical changes due to the building of dams and other natural causes. The tendency of the people of Sind to migrate was noted by many authors including Williams in 1820 and by Frere in 1855. There were, as a consequence, a large number of deserted villages of Sind in the land area below the loops and near Kanjarkot (see, for instance, Sheet 91 of Ind. Map B-2).

Pakistan relies on the statements by various British officials (e.g., Frere, *op. cit.*, pp. 10–13) to the effect that, according to the procedure adopted for Macdonald's Survey, the settlement authorities were first to reconstruct the boundaries of dehs as they existed at the time of the Kalhoras (pre-1783), basing themselves on the recollection of the villagers. According to Pakistan, the inevitable implications of such a procedure were the following:

(*a*) Only populated villages would get reconstructed, whereas deserted villages (such as some below the loops area) would get left out;

(*b*) The areas left outside the limits of the last dehs in the proximity of the Rann would thereby get automatically included in the Rann; and

(*c*) The outer limits of the last villages as reconstructed would emerge as the outer periphery of the province.

Pakistan also argues that the Rann itself was not considered as land, and being unproductive for the purpose of cultivation and revenue, it was not covered by the settlement operations. Since Macdonald surveyed only such area as was delimited by the settlement authorities, he did not, therefore, survey the Rann. In this context, Pakistan also relies on the contemporary survey rules (Pak. Doc. B.353/Ind. of 1848) whereby, where a large river formed the boundary between districts, it was to be surveyed by the party last approaching it. Thus Macdonald did not survey the Rann whereas Pullan, who surveyed the other side of the Rann a decade later, surveyed it as a part of his operations.

India replies that if this rule did apply to the Rann and the Rann was treated as a river, the question would be why the boundary was not shown down to the middle of the Rann as it was shown down the Sir Creek and other creeks. Since it was not shown, the boundary did not run down the middle of the Rann.

The area covered by the Rann Sub-Circuit was in fact surveyed by Macdonald but it was merely an overlap and it lay outside the boundary of Sind. Pullan surveyed the Rann, not in pursuance of the rule about the survey of large rivers, but as a part of Kutch.

With reference to Pakistan Document B.355, India says that the passage quoted by Pakistan shows that the thakbust maps were made over to the

surveyor for guidance; the surveyor checked them and saw that they were correct. But that was not the limit of his functions. If it had merely been a settlement map, it would have been, but Macdonald was surveying the whole of Sind; it was his mandate. It is impossible to say that, when one speaks of the survey of the whole province this means a survey of the villages and nothing else; 5,000 square miles of Thar Parkar were surveyed; in Thar Parkar there was no question of thakbust maps. Woods, hills, wastelands and everything else were surveyed. In the face of that, it is now too late to try to draw some distinction between villages and what was not part of a village or what was left out of a village and so on. The survey was of the whole of Sind and not only of the villages. Whatever the nature of the tract, inhabited, uninhabited, waste, hills, barren, whatever it was, the whole of Sind was in fact surveyed.

To Pakistan's argument that Indian Maps BBB-7, BBB-8, BBB-9 and BBB-9A are all headed "District Mahomed Khan's Tanda" and cover the territory of that district, India says that the boundary is clearly demarcated by symbols and if all the sheets are arranged together, it will be seen that whatever is there within the frame of these sheets would not be Mahomed Khan's Tanda District. The Index Map (Ind. Map BBB-10), signed by Macdonald, puts the matter beyond all doubt as to what, according to Macdonald, was Mahomed Khan's Tanda District. There is also a clear indication in the Field Book that Macdonald was entering Kutch territory at the trijunction. The Report of Macdonald for 1867–68 further describes the Rann Sub-Circuit as being to the south of Badin, indicating that the Rann which was surveyed was not surveyed as a part of Badin. India points to Macdonald's maps showing Omerkot District and argues that it cannot be contended that the area near Omerkot District, which is admittedly in Rajasthan, is a part of Sind. A map is intended to be read intelligently and it is not right to look at headings and say that everything within the boundaries of the map must be that district and nothing else.

Pakistan states: The survey in Sind had a limited purpose. What was contemplated was a rough survey for revenue purposes. Therefore, the boundaries shown in Macdonald's maps are village boundaries, or still more precisely, boundaries of the settled or cultivated portions of the villages, that is those parts from which levying of a tax was possible. Macdonald had never been asked to inquire into the extent of the jurisdiction of the Amirs or the British in Sind. Nor did he consider himself to be entering foreign territory (Kutch), when he surveyed the Rann Sub-Circuit. Macdonald in his Report for 1869–70 called the area to the south of the Khori Creek a foreign territory. He did not use this term anywhere else. He asked the Rao for permission to enter his territory for the purpose of the necessary overlap (Ind. Doc. A-84) merely when approaching the Shahbunder District, where the the Sind and Kutch boundaries, divided by the Khori Creek, admittedly were conterminous. Consequently, in Macdonald's maps the word "Cutch" appears merely in the Lakhput region, while the Rann proper is marked "Runn of Cutch". Furthermore, Macdonald's line has a double-coloured riband only between the Shahbunder District and the Rann Sub-Circuit of the District of Mahomed Khan's Tanda, as between other similar Sind districts, although such riband would have been appropriate along its whole length if the Rann was considered as belonging to Kutch. It is today also im-

possible to verify the meaning of the boundary symbols used in the different maps of Macdonald. His own intention in this respect is best seen in Indian Maps B-3 and BB-4, in which no boundary symbols at all are to be found along the Thar Parkar edge of the Rann and along the Khori Creek. However, the Survey of India, without authority, in late maps put higher status on the lines till they were ultimately shown as a provincial boundary.

Pakistan continues: In Indian Map B-3, the Rann Sub-Circuit is correctly shown as a surveyed portion of Sind. Pakistan does not believe that the expensive four-inch survey, south of the loops, was an overlap. In any event, none of the sheets reproducing this "overlap" makes any allusion to the alleged fact that they cover Kutch territory. Although, for instance, Indian Maps BBB-7, BBB-8, BBB-9, BBB-9a (– TB 12) wholly cover a territory which in accordance with the Indian contention would have been Kutch, they are all headed "District Mahomed Khan's Tanda", the name of an old district in Sind. Macdonald's vertical line in this region artificially separated the Rann from land (or District Mahomed Khan's Tanda from Shahbunder District), and the boundary from the trijunction along the two loops separate the limits of the settled dehs from uncultivated land outside these limits. Similarly, Macdonald would have surveyed Dhara Banni and Chhad Bet, like the Rann Sub-Circuit, if he had been properly informed that they were lands distinct from the Rann power. It is furthermore worthwhile noting that the Macdonald line cuts a well known Sind town, Rahim ki Bazar, away from its hinterland. If the boundary symbols and the coloured riband mean what India suggests, then Rahim ki Bazar would belong to Kutch, which no one has ever asserted.

Pakistan also points out that Indian Map BBB-1 and Pakistan Map 57 prepared by Macdonald show a thana of the Amirs of Sind below the loops. If the loops were the Sind–Kutch boundary, it would follow that the Amirs of Sind had a thana inside Kutch. Pakistan submits that the loops could not mark the Sind boundary.

Pakistan further states: Commissioner Lucas' statement that the vertical line had been a recognised political boundary since 1837, seems to be completely unwarranted and based on misunderstanding. This vertical line was not shown in any map produced before 1871, and cannot therefore be qualified as "historic". The reports mentioning that the whole of Sind had been surveyed cannot be understood to refer to more than all those portions of Sind which were to be surveyed. Whatever the Macdonald line might be, it is certainly not the boundary between Sind and Kutch. This has always been understood by the Sind Administration, and is clearly demonstrated by the fact that, as early as 1875, the Commissioner in Sind recommended to the Government of Bombay that the Political Agent, Kutch be asked to meet the Political Superintendent of Thar Parkar to determine accurate boundaries between Thar Parkar and Kutch "on the Runn" (see Pak. Doc. B.7, and Chapter VIII, Section 1). Furthermore, Erskine, later Commissioner in Sind, who had himself once been associated with Macdonald's Survey, wrote in a letter of 21 November 1884, to Pullan, then in charge "Kattywar and Cutch Survey":

> "As you informed me last year that you had deputed one of yr. subordinates to survey the boundary between Sind and Cutch – I called on the local Officers for some

information as to the actual line of boundary which never as far as I could ascertain had been surveyed. I ascertained as I thought that the Map usually called the Trignometrical Survey Map did not show the limits towards the Runn of Cutch of the Province of Sind but merely the limits of defined dehs or village lands beyond these there are stretches of sand etc. entirely waste and uninhibited – where there is neither water nor cultivation. It will be necessary however to take care that the actual boundary namely the Runn itself is shown as the boundary as no portion of Cutch Territory is found on the Northern side of the Runn. I mention these facts merely to prevent any misunderstanding as to the actual state of matters – doubtless they are already well known to you." (Pak. Doc. B.376; it was agreed that the "Trignometrical Survey Map" corresponds to the maps of the Ind. Map. B-2 Series.)

Pakistan adds that Erskine's conception of the Rann as itself constituting the boundary is corroborated by Macdonald's first, although later corrected, survey of Nara Bet as an enclave in the Rann, belonging to Sind (Sheet 96 of the Ind. Map B-2 Series; and Indian Memorial, para. 124).

Pakistan concludes that the meaning of Macdonald's maps remained clear in Sind, but that they had introduced an element of confusion – the boundary symbols along the northern edge of the Rann – and that they soon became misunderstood or misinterpreted in the Survey Department.

After lengthy discussion, the Parties agree that Macdonald's Survey was a combined revenue and topographical survey; India adds, however, that it became predominantly a topographical survey especially following the issue of the Despatch from the Secretary of State for India of 31 March 1864 (Ind. Doc. TA 43). The following facts are also agreed: the initial work for the production of the maps was done by "settlement officers"; they made the local inquiries, then asked the villagers to make boundary marks, thaks (usually mud pillars); as soon as villagers had put all the thaks round their village, they had "thak-busted" it; the settlement officers then thakbusted that village on paper and produced a "thakbust map" (a sample from Upper Sind, 1861, is shown as Ind. Map TB-18B); on the basis of such thakbust maps the professional surveyors would do the actual surveying and produce the village (deh) plans, normally on a four inches to one mile scale ("Congregated Village Plans" are shown as Ind. Maps BBB 1–9 and Ind. Map TB-12; neither Party was able, however, to state which set of conventional signs Macdonald had used in these maps). It is also common ground that thakbust pillars were erected in the relevant areas of the Karachi and Hyderabad Collectorates (that is, on the vertical line and along the two loops), but not in the Thar Parkar Superintendency, where Macdonald's line roughly followed either a track or the northern edge of the Rann.

As to the surveyor's final product, the "standard maps", which ought to be signed by him and thereupon printed "without any alterations or additions whatever", the points of view differ. Pakistan sees such "standard maps" in Indian Maps TB-18 and TB-18A, although their printed versions, the maps of the Indian Map B-2 Series, contain "unauthorised" changes. India submits that the genuine standard maps have not been found; Indian Maps TB-18 and TB-18A being mere preparations for these. Pakistan maintains that Pakistan Maps 66–68 which do not show boundaries and Pakistan Maps 70–71 are also standard maps, although not intended for printing by the Office of the Surveyor-General in Calcutta, but for use of the Collectors of Sind. As stated above, India

treats these maps as merely preparatory, without challenging that they might have been forwarded to the Collectors.

India concludes: Macdonald's Report for 1866–67 shows that stone marks were being substituted for the mud pillars so as to render the boundaries permanent. When Macdonald reached the southern part there were already existing mud pillars demarcating the boundary of the two loops in the Badin Taluka of Mahomed Khan's Tanda District; thus there was a physical demarcation on the ground so far as the two loops are concerned and the vertical line, that is the western boundary, was demarcated by pillars at the time when the survey operations were going on. So far as the Thar Parkar boundary is concerned, there were no pillars but there was a natural feature which did duty for pillars so far as the demarcation on the ground is concerned. In this connection, India draws attention to rule 28 of the Rules for a Rough Survey and Settlement in Sind, framed by Frere, which said: "In many cases, no permanent boundary will be needed: the river, or a canal or a tank, hills of stone or sand, or roads, often form as good a boundary as could be desired." The Report for 1867–68 shows that Macdonald came across deh triple junctions permanently marked by stone pillars and he used them as theodolite stations. The Report for 1869–70 says:

> "There was no difficulty in tracing boundaries which, when surveyed, agreed well with the Thakbust Maps which had been drawn to scale on plane-tables. As all the boundary pillars were of stone, I utilised them as Theodolite Stations so that nearly every station in our traverse is permanently marked on the ground by a stone pillar."

Thus, India says, the entire, or almost entire, conterminous boundary between Sind and Kutch had been demarcated – the vertical line and the two loops with pillars, and the Thar Parkar boundary by the edge of the Rann and the road.

India says that if any of the bets – Dhara Banni, Chhad Bet and similar places – had really belonged to Sind, they would have been included in the territory of Sind.

India submits the following six propositions regarding Macdonald's Survey:

(*a*) There were no accurate or reliable maps of Sind before Macdonald's Survey; the highest authorities said that they were handicapped for want of a good map.

(*b*) Macdonald's Survey was both topographical and revenue and, for the last four years, predominantly topographical. Being a topographical survey of the Province of Sind, the political boundaries of Sind and of its main divisions, districts and talukas had to be drawn; a topographical map of Sind would not be complete unless these political boundaries were drawn. The "confusion" was only with reference to the inner divisions of Sind, like the village boundaries or the purgana boundaries but no confusion ever existed as regard the political boundary of Sind.

(*c*) The boundaries shown on the maps in the Indian Map B-2 Series and the Indian Map BBB Series were not included by some unauthorised person; they were drawn by Macdonald. The departmental instructions were that they had to be drawn by the man in charge.

(*d*) The boundaries of Sind were drawn (i) after the most careful investigation, (ii) as recognised and indicated by the Sind authorities themselves, (iii)

as accepted after publication by all authorities from the Secretary of State down to the Collectors in Sind to whom the maps with the boundaries were sent, and (iv) as reproduced in subsequent maps of the highest authority, with minor variations, and after 1914 subject to rectification.

(*e*) The whole of the Province of Sind was surveyed, without leaving out any territory comprised in that province.

(*f*) No part of the Rann now claimed by Pakistan is shown by the survey as part of Sind; the Rann Sub-Circuit is clearly shown as lying outside the boundaries of Sind.

India concludes: Apart from minor variations, the Macdonald line stood the test of time, and it went through two distinct checks later, out of both of which it emerged unscathed. The first check was that applied by Erskine in the west, Pullan in the central part and Osmaston in the east; they reaffirmed the Macdonald line, with some variations. The second check was in the form of Sind taluka maps, prepared by the Sind authorities. They again reaffirmed the boundaries shown by Macdonald. The taluka maps were not a mechanical repetition of the Government of India survey maps but the local authorities applied their mind to them with a view to correcting the boundaries where necessary.

The entire historical evidence of a hundred years – the acceptance, the recognition, of the boundary of Sind and the conterminous boundary of Kutch runs counter to the suggestion of Pakistan that some portions of Sind were left out of the survey; it is a suggestion made for the first time in this adjudication.

Pakistan argues that there was no possibility for Macdonald to have "polished up" these maps, Indian Maps TB-18 and TB-18A, as stated by India, since Macdonald had to proceed to the Delhi Survey immediately afterwards. According to Pakistan, its basic argument about Macdonald is therefore vindicated, viz., that the printed maps in the Indian Map B-2 Series contained unauthorised changes in Macdonald's own work. Pakistan also stated that the original signed sheets of Macdonald (the standard maps) would correspond to Indian Map B-3.

Special attention was devoted to Field Books from Macdonald's Survey. In order to show that the State of Kutch, and not merely the Rann, extended up to Macdonald's line, India demonstrated three Field Books from Mahomed Khan's Tanda indicating that the trijunction north of the vertical line was a trijunction between Karachi, Hyderabad and *Lakhpat* (Ind. Doc. TA 75), or a point where *"Kutch"* joined the Jati Taluka (Ind. Doc. TA 74), and that a trijunction between the two loops was marked "Rann Talek (up to) Kutch Bhuj" (Ind. Doc. TA 76). Pakistan could not explain those statements, but produced, in order to rebut them, a Field Book from District Shahbunder, in which the areas around the trijunction at the top of the vertical line were marked: "District Mahomed Khan's Tanda, talooka Badin, Main Circuit No. 37, Deh Darun, District Shahbunder, Talooka Jattee Main Circuit No. 9, Sub-Circuit of Rann, Rann of Kutch"; where the vertical line comes down southwards, at the station T, to the west of the vertical line, is mentioned "Sir Gandho Main Circuit 13" and "Sir Gandho Main Circuit 15"; and to the east of the vertical line is mentioned the Rann of Kutch (Pak. Doc. B.388/Ind.). Pakistan also produced Macdonald's Computation Volume I (Pak. Doc. B.389/Ind.), in which to the east of the

vertical line from traverse station U to the trijunction and between traverse stations G to T was written "Runn of Kutch".

Pakistan states: Macdonald in his own Reports or by his own conduct does not betray any awareness that while surveying Badin Taluka he could be crossing over into Kutch territory at any point. (He did not hold a high opinion as a field officer of his subordinate in whose Field Book these entries are to be found, as is shown by Pak. Doc. B.358/Ind.). No document, map or other record has ever described the Kutch Taluka Lakhpat as extending northwards to the trijunction. In none of the maps prepared by Macdonald is the area in question marked as Lakhpat or Kutch. It is invariably marked as the Rann or the Rann Sub-Circuit. In 1883–84, the Deputy Collector of Tanda made every effort to find where the boundary of the area under his charge with the State of Kutch lay, but was unable to get any information beyond a statement that "it was somewhere in the Runn".

India answers: The Report of Macdonald for 1867–68 describes the Rann Sub-Circuit as being to the south of Badin, indicating that the area covered by the Rann Sub-Circuit was not surveyed as part of Badin. Since the boundary is conterminous, the maps of Macdonald show the boundary between Sind and Kutch. Even if Mr. Loftie, who made the entries in the Field Books, had committed any mistakes, ultimately the officer in charge of the survey party was responsible for the accuracy and it would be presumed that everything was checked and found to be correct by Macdonald.

The Collector was aware of the Indian Map B-2 Series which showed that the Tanda sub-division of the Hyderabad District bordered on the Rann of Kutch and that it was Badin Taluka and not Tanda which touched the Rann.

As will be seen in Sections 6 and 7 below, the Macdonald line in the Indian Map B-2 Series, whatever it might have stood for, was fully surveyed again in 1904–05 by Erskine (from the Arabian Sea to Dhoro Puran at the western boundary of Diplo Taluka) and in 1938–39 by Osmaston (from a point south of Nahir Vero in Sheet 94 of the Indian Map B-2 Series to the Jodhpur boundary). As to the remaining portion of the Macdonald line, its alignment was, but with less sinuosity, repeated in Indian Map TB-26, an Indian Atlas Map of 1872, and in the *Map of India and Adjacent Countries*, 1928 (Ind. Map B-16), whereas in the later Indian Atlas Maps included in Indian Map B-44 (similar to the Pakistan Resolution Map), as well as that of 1916 (Ind. Map B-5), Rahim ki Bazar and an area south thereof were shown to the north of the line. This alignment continues to appear in the Degree Sheets of 1921, 1936 and 1943 (Ind. Maps B-18, B-30 and B-37; see also the Mosaic of 1946, Ind. Map B.40). A still greater area south of Rahim ki Bazar is shown as included in Diplo Taluka in one single map, Indian Map B-29, a map of Diplo Taluka prepared by the Superintendent of Survey and Land Records in Sind, in 1927, and reprinted in 1934 with corrections and alterations. A possible, but uncertain, origin of the 1934 alignment might be found in Indian Map B-11 of Erskine or its coloured version, Pakistan Map 115. Finally to be mentioned is the large-scale Indian Map B-26 of 1931 (reprinted in 1947), in which Erskine's map, Indian B-11, to the west of Dhoro Puran, has been combined with a revised version of Macdonald's Sheet 92 from the Indian Map B-2 Series, to the east of said river. In this new map

is marked to the south of a dash-two dots-dash, province or State boundary: "Rann of Cutch", "States of Western India".

This Section may be concluded by the statement that during the oral hearings, Macdonald's Survey and its products were repeatedly and thoroughly discussed.

6. *The Survey of Kutch in 1879–86 (Pullan)*

In the years 1879–86, a survey of the State of Kutch was carried out under the Survey of India Department. The party of surveyors was headed by Major A. Pullan, Deputy Superintendent of the Survey of India. In consequence, this survey became known in the present case as Pullan's Survey.

Pullan's Survey was preceded by a local Kutch revenue survey, which began in 1873. That survey, however, was concerned only with the Rao's own holdings of land, and the maps did not even depict any taluka boundaries. India demonstrated as samples three of these maps, Indian Maps TB-31 to TB-33. Pakistan points out that even in those samples lands were shown as separated from the Rann by village boundaries, and contends that the position as depicted was on a par with Macdonald's maps.

Pakistan points out that the Survey Department of India at an early stage of Pullan's Survey had prepared two maps which interpreted the Macdonald line in a divergent manner. In Pakistan Map 25, published in 1880 under the direction of the Surveyor-General of India, Macdonald's vertical line and the line along the two loops appears as an "internal line within Sind". But Indian Map B-46 shows a large portion of the Rann as included in Kutch. This map was printed in 1878 by the Indian Government's Photozincographic Office, Poona, and was published in the *Bombay Presidency Gazetteer* of 1880.

It is agreed between the Parties that Pullan's task was to make a "topographical Survey of the Province of Kutch". His survey was approved by the Government of India, the Government of Bombay and the Council of Regency of the State of Kutch, of which the Acting Political Agent was the President. (The letter containing the exact terms in which the Government of India gave the approval is not on record, but the letter of the Surveyor-General to the Government of India, intimating that, with the approval of the Government of Bombay, the State of Kutch was to be surveyed, is produced as Ind. Doc. TA 61.)

Pullan submitted Annual Reports to the Surveyor-General of India throughout the period of his survey about the work done by him during the season of the year under report: his Reports for the seasons 1880–81, 1881–82, 1882–83 and 1883–84 (Ind. Doc. TA 62) have been produced by India and some of these Reports include tabular statements of "Detail and Topography" and "Detail of Triangulation" which mention Kutch as the chief district/State in which the season's work had been conducted. The Surveyor-General of India published every year General Reports on the Operations of the Survey of India Department during that year. The General Reports for 1880–81, 1881 -82, 1882–83, 1883–84 and 1885–86, in addition to describing in brief the work done by Pullan's Survey, contain an "Index Chart to the Cutch Topographical

Survey". The Index Charts show, differently marked, the area surveyed in the previous season or seasons, the area surveyed in the current season and the area triangulated in advance. These areas cover the mainland of Kutch, the whole Rann, with the exception of a portion to the extreme north-east, as well as "overlapping" portions of Sind and Indian States abutting upon the Great Rann. The General Reports were submitted to the Government of Bombay, which passed Resolutions thereon as far as it was concerned, and were also transmitted to the Government of India and the Secretary of State for India.

During Pullan's Survey, and shortly after Commissioner Erskine's letter of 21 November 1884 (see above), a discussion took place between Pullan and the Sind authorities concerning "the claim put forward by the Cutch Darbar" to the whole of the Rann. However, the Bombay Government, on 3 July 1885, intimated to Pullan that it did not "desire that any question of boundaries in the Rann between the Province of Sind and the Cutch State should be raised" (Pak. Doc. B.10). This is treated by Pakistan as an instance of the Sind–Kutch boundary coming under particular consideration, and is dealt with in Chapter VIII, Section 2.

India relies upon Pullan's Survey on the ground that it was of the State of Kutch including the entire Rann, and that this position was known to and accepted by all authorities – the Secretary of State, the Government of India, the Government of Bombay, the Commissioner in Sind and the Surveyor-General of India.

According to India, Pullan surveyed the Rann on the basis that it was Kutch territory and depicted the Sind–Kutch boundary accordingly, but ceased to do so after the aforesaid Bombay Government Resolution. (However, he continued to depict other boundaries in the eastern Rann area, see Pak. Maps 103A and 111 of 1887, and 101 of 1888.)

India's submissions in this connection are as follows: Pullan's conception is shown already in his letter of 9 August 1880 (Ind. Doc. TA 62), in which he informs the Surveyor-General that, in the next season, he is going to survey the Rann in eight sheets. He therefore asks for the "active co-operation of the Durbar authorities", and emphasises that "the survey when completed, will be of the greatest use to the Durbar who are very desirous to obtain a reliable map of the Country". In a further letter of Pullan to the Surveyor-General of 13 September 1880 (Ind. Doc. TA 62), it is stated: "...the Rann is an ever impending trouble as well met at once and bit by bit co-temporaneously with the more fertile *portions of the province* ... The Honourable Mr. Ashburner Senior member of Council in Bombay permits me to state that he concurs with my view of the case and thinks that 'coûte que coûte' the Rann Survey should be carried on yearly at the same time as the Survey of the *rest of the Province*" (the italicized words stressed by India). In his Report for the season 1880–81, the following is to be read: "The *part of Cutch* surveyed during the past field Season comprised firstly a portion of the Great 'Rann' and the widespreading grass land known as 'Bani' together with the low thickly wooded ground lying to the south and S.E. of the town of Lakhpat (sheets 3, 4, 5 and 11 of Cutch)". The relevant Index Chart of the Kutch Topographical Survey (Ind. Map BB-2) shows that all these sheets, except Sheet 5, relate to the area above the 24th

degree of north latitude and this area is referred to by Pullan as "the part of Cutch" (see the quotation above). The General Report published in 1886 reflects the Bombay Resolution when it states: "The field operations were continued till 31st March 1886, and they comprised the completion of the topographical survey of Cutch with its adjacent 'Ran', and of the peninsula of Nagar Parkar, as well as of small portions of North Gujarat falling within the marginal sheets of the Cutch Survey. During the recess the fair drawing has been completed of sheets ... Thus the survey of the Province of Cutch has been brought to a successful conclusion." (Pak. Book 92.) It also refers to the help Pullan received from the Kutch State, when the Surveyor-General writes: "Colonel Pullan acknowledges the cordial co-operation and assistance he has received in all matters connected with the survey, from Colonels Reeves [the Political Agent in Kutch], Goodfellow and Phillips, and Diwan Bahadur Manibai Jasbai; also from Duffadar Kali Khan of His Highness the Rao's Police, who accompanied him during the whole of the operations." (*Ibid.*)

India also stresses that in the tabular "Details of Topography" or "Details of Triangulations" from the seasons 1880–81 and 1881–82, "Cutch" is mentioned under the headings: "Names of Chief Districts, and States in which the Season's Topography has been conducted", and for the seasons 1880–81 and 1882–83 "Cutch" is mentioned under the headings: "Names of Chief Districts and States through which the Season's Triangulation has been conducted". As the area topographically surveyed and triangulated during these seasons included the area above the 24th parallel up to the northern edge of the Rann (*vide* Ind. Maps BB-2, TB-19 and TB-20), Pullan's description of this area as "Cutch" indicates that he regarded it as forming part of the territory of Kutch.

India points out that the Index Charts in Indian Maps BB-2, TB-19, TB-20 and Pakistan Maps 93 and 114 show that Pullan surveyed and triangulated the entire Rann (except a small portion in its north-eastern corner); since he was entrusted with the task of surveying the Province of Kutch, his understanding must have been that the entire Rann was part of Kutch, otherwise he would not have surveyed the Rann. These Index Charts form part of the General Reports which were approved by all higher authorities including the Secretary of State. Among the maps showing the northern portion of the Rann, above the 24th parallel, Indian Map B-47 of 1882 (with the sub-title: "Part of the Great Ran") and the two sister maps, Pakistan Maps 40 and 80 of 1886, were all marked as mainly including "Cutch" territory, and Pakistan Map 69 of 1884 was headed "Parts of Sind and Cutch", of which the reference to Sind had its obvious explanation in the overlap into the mainland of Sind. Finally, Pakistan Map 39 of 1881 (Sheet No. 5 of Cutch; sub-title: "Parts of Cutch and the Great Ran"), showing the Lakhpat region, and its continuation to the north in Indian Map B-47 (including the two loops), depicts with Thuillier's above-mentioned symbols for political boundaries, dash-dash, what is evidently the conterminous Kutch–Sind boundary. This is particularly emphasised in Indian Map B-47, where the boundary also has a double-coloured riband. India admits, however, that Indian Map B-47 is not "a model map of what the two loops look like or should look", and that it will be of no assistance for the demarcation of the boundary if it is decided that the boundary lies along the northern edge of the Rann. But

this map does show that "Pullan, when he surveyed Kutch and the Great Rann of Kutch, regarded and accepted the Great Rann as forming part of Kutch..." The boundary symbol on Indian Map B-47 is relied upon by India "not for the purpose of saying that the boundary is accurate from point to point and mile to mile but for the purpose of showing that Sind ended at the northern edge of the Rann and that the boundary of Kutch and Sind was conterminous". (Verbatim Records, pp. 14114/20.)

India continues: It can be no-one's case that the straight boundary lines in Pakistan Map 39 and Indian Map B-47 are meant to represent a footpath although the dash-dash symbol is indicated in the legend as representing "Foot paths". Furthermore, the dash-dash line cannot just correspond to the limits of the survey. That becomes clear by a study of subsequent official maps, in which Pullan's alignment of the Kutch–Sind boundary in the Lakhpat region and along the two loops has been endorsed: two proof maps to Aitchison's Treaties of 1892 (Ind. Maps TB-20B and TB-20C), Aitchison's map of 1908 (Ind. Map TB-17), and the Third and Fourth Editions of the 32-mile map of India (Ind. Maps B-50, BB-3, revised copy of the Third Edition, and B-51). Pullan's finding that Kutch extended across the Khori Creek and possessed a foothold on its western bank was also upheld by the rectification of the boundary in 1913–14.

India demonstrates Indian Map B-48, which is a reprint of Pullan's "sheets 17, 18, 24 and 25 of Cutch with additions and corrections from extra-departmental information up to 1929". This map contains a "Province or State" boundary along the northern edge of the Rann. The heading of the map is "States of Western India", "Cutch State" and it covers an area of the Rann immediately to the north of the 24th parallel in eastward continuation of the area in Indian Map B-47 and includes a portion of Sind astride the boundary line along the northern edge of the Rann. Biar Bet, Sarfbela, Bawarla Bet, "Dharmsála", Gainda Bet, Mori Bet, Dhara Banni, Bedia Bet, Chhad Bet and Meruda Hill may be seen in this map. India attaches great significance to it and relies upon it strongly. It disputes Pakistan's case that the Kutch–Sind boundary lay along the 24th parallel because this is a map of the Kutch State and the States of Western India and contains no area other than the area above the 24th parallel. There is no boundary symbol along Gainda Bet or the dharamsala but there is a boundary symbol along the northern edge of the Rann. What lies to the north of the boundary symbol is Sind and what lies to the south of it is Kutch and the States of Western India. What may have been regarded as uncertain in 1886 is regarded as certain by 1929.

Both Indian Maps B-47 and B-48 are official publications. The maps published after Pullan's Survey by the Survey of India not only show the boundary as asserted by India but some of them expressly mention Pullan's Survey as one of the surveys on which these maps were based.

India concludes by saying:

(*a*) The Rann which Pullan surveyed was recognised and recorded by him as forming part of Kutch State from the beginning until 1885; he did not survey it as a geographical necessity or because the Rann was intimately connected with Kutch. Under his own signed statements he showed the Rann right up to the northern edge as forming part of Kutch State.

(*b*) The Sind–Kutch boundary was accepted and recognised as conterminous. If the case that this is a separating entity between States were correct in any way, history would never have run during the six years of the survey as it did in fact. The documents produced by India leave no doubt that the Sind–Kutch boundary was conterminous and it was surveyed as such by Pullan.

(*c*) The omission of Pullan to draw boundaries in 1885–86 was rectified in Indian Map B-48, which shows the Diplo–Kutch boundary and is based wholly on Pullan's Survey. It fills most of the gap between Erskine and Osmaston and completes the second check all along the boundary depicted by Macdonald. The boundary with the boundary symbol lying along the northern edge of the Rann will be noticed. This boundary separates Sind from Kutch and shows Dhara Banni as belonging to Kutch.

Pakistan states: Pakistan denies that Pullan surveyed the Rann as a part of Kutch either before or after the Bombay Resolution of 1885. Pakistan Map 113, which is the 1886 version of Indian Map B-48, does not show any boundaries. Pullan surveyed the Rann only "because it is intimately connected with the country of Cutch and it was an absolute geographical necessity that it should be surveyed" (Pak. Doc. B.11), in order to establish a connection with the area surveyed by Macdonald. If the Rann of Kutch had been surveyed only up to its middle, the remaining northern half would have remained an ugly gap. Moreover, the Rann of Kutch being like a large river bed, its proper mode of survey is as one whole, in its entirety. This is an inescapable necessity. The notion of the Rann as a gap or separating entity between Sind and Kutch is clear from the following passage in Pullan's above-cited Report for the season 1880–81: "During the past Field season as part of the *Great Rann*, a wild and barren region of sandy waste and salt beds which separates Cutch from the province of Sind, was surveyed on the scale of 1/2 inch to a mile." (Ind. Doc. TA 62). Pakistan also refers to the above-quoted General Report of 1886, where the following is stated: "In addition to Cutch, the adjacent Ran...[has] been topographically surveyed." But even if Pullan at the outset thought that he was surveying Kutch, and then changed his mind, every bit of territory he surveyed would not become Kutch only because he thought so. It is entirely irrelevant what Pullan thought. And, in any event, the 1885 Resolution superseded everything done or thought before that date in respect to the Kutch–Sind boundary. In the Index Charts to the Kutch Survey, Pakistan could not find anything indicating that the Rann belonged to Kutch: wherever "Cutch" is printed on those maps, it covers only the mainland of Kutch and does not include the especially marked Great or Little Rann.

As to the annotation of "Cutch" under the column "Chief District" in the "Details of Topography" or "Details of Triangulation", Pakistan maintains that it does not necessarily mean that every bit that Pullan surveyed during the operations in question was politically a part of that district. In this context, Pakistan made the following general statement:

> "Between Kutch and the Rann of Kutch the following connexions exist. First the name – Kutch and the Rann of Kutch. Second, the Rann of Kutch is intimately connected with the coastal territories surrounding it, and Kutch happens to be the coastal territory with the most extensive coastline on the Rann since the Rann sweeps round it. It is intimately connected with all the coastal territories because it bounds the coastal

territories, it divides the coastal territories, and it surrounds one of the coastal territories. Of coastal territories this one, Kutch, happens to be the one with the most extensive coastline on the Rann. Thirdly, so far as the share of the rights in the Rann is concerned, Kutch is the principal territory because its coastal rights extend up to the middle of the Rann in all sectors, thus giving it half of the entire rights in the Rann, the remaining half being apportioned amongst the remaining coastal territories. Half of the rights in the Rann will belong to Kutch; the remaining half in different sectors would belong to the other coastal territories, Dhrangadhra would have a little bit, Palanpur would have a little bit, Morvi would have a little bit, with Sind having the major chunk on the northern side; all the rest put together will have half, and Kutch alone will have half – it is the principal territory which is connected intimately with the Rann. Those are three important connexions which the Rann of Kutch has with Kutch." (Verbatim Records, p. 17302.)

With regard to the particular maps, Pakistan contends: The reference to "Cutch" in the headings of many maps is explained by the name of the survey party. However, Pakistan Map 41 of 1886 states correctly: "Cutch Survey", "Parts of Thar and Parkar, North Gujarat and Ran of Kutch". And when the party later became known as the "Bombay Survey" or "Bombay and Sind Survey" the maps are entitled "Districts Thar and Parkar" (on two maps), "Parts of District Thar and Parkar (Sind) and Vav State (Palanpur Agency, Bombay)", "Part of Palanpur Agency" and "District North Gujarat" (Pak. Maps 43, 44, 103, 103A and 111, respectively; see also the later Pak. Maps 48 and 49 of 1908); and these maps cover great portions of the eastern Rann. Pakistan Map 69 is the only exhibited map signed by Pullan. It is a "plane table". This map shows "Parts of Sind and Cutch", although its whole area is above the 24th parallel. The reason is that in this sector the traditional boundary runs through Gainda Bet, slightly to the north of that parallel, so that the area to the south thereof, including a resthouse on Gainda Bet, actually belongs to Kutch. (India points out that Pak. Map 69 is not a published map; it only constitutes a part of the basic material for fair drawing.) As to Pakistan Map 39 and Indian Map B-47, these maps definitely do not show any boundaries. It is most probable that the line with the dash-dash symbol is the line showing the limit of the survey (cf. Pak. Maps 40 and 93), in Indian Map B-47 corresponding to Macdonald's "traverses", or it might be considered "just as an imaginary kind of line which corresponds to nothing at all". (Verbatim Records, p. 6725.) Pakistan further illustrates this point by producing Pakistan Map 112 which demonstrates that the alignment shown in Indian Map B-47 is very different from the alignment of Macdonald in Indian Map B-2 (Sheets 91 and 92); nor does that alignment correspond with the alignment claimed by India. Moreover, the colours of the boundary riband in Indian Map B-47 are not the usual colours for Sind and Kutch. Therefore, none of Pullan's maps ever showed any Sind–Kutch boundaries. The situation was correctly appreciated in the Atlas Map of 1898, Indian Map B-6, where, however, the Macdonald line, in the Lakhpat region, instead of making a dent to the west, made a dent to the east. But some confusion must have been created in the Survey Department, as is shown by the "odd shape" of the line in Aitchison's maps as well as by the earlier editions of the 32-mile map. The line was changed for the first time in the Fifth Edition of 1915.

Pakistan finally draws attention to Pakistan Map 69 of 1884 and Indian Map B-48 of 1929, in which the differentiating edge or depression north of Dhara

Banni was depicted to the north of the track from Rahim ki Bazar to Nagar Parkar. The edge corresponds to the depression and the depression does not give a different status to Dhara Banni. Pakistan adds that this depression is filled with water during the rainy season. "It is shallow and it is narrow and during the dry season it appears as no more than a little depression." (Verbatim Records, p. 17381.)

This Section might now be brought to an end by quoting a passage from one of Pullan's Reports, in which he refers to the Meruda Hill, in the northern part of the "barren and featureless" Great Rann, between Dhara Banni and Nagar Parkar, as a "very remarkable point, viz. a bare conical rock rising abruptly from the plain to a height of 55 feet. The rock is basaltic and quite denuded of vegetation, save at its foot where a few stunted cactus bushes cluster. The shadow thrown by this solitary mass on the scorched 'Ran' renders the spot a welcome resting place for man & beast when crossing the desert". (Ind. Doc. TA 62.)

7. *The Survey of Parts of Sind in 1904–05 (Erskine)*

In the Indian Memorial it is said:

> "In 1904–05, portions of Karachi and Hyderabad Districts were resurveyed by a Party of the Survey of India, functioning under the Superintendent, Trigonometrical Survey. The Sheets prepared on the basis of this survey were numbered 73, 74E, 93W and 94W, of the Survey of India. Sheet No. 73 [Ind. Map B-9], which was published in 1906, related to parts of Hyderabad and Karachi Districts and a portion of the Rann to the south thereof. According to the legend, the Province or State boundary is shown by the symbol -·-·-·. In the light of this symbol, it will be observed that no part of the Rann of Kutch which is covered by this sheet is included in the Hyderabad or Karachi District. Sheet No. 74E [Ind. Map B-10], which was prepared in 1907, maps out parts of Karachi and Hyderabad Districts. The State boundary is shown by the symbol -·-·-· and a double colour riband – purple and yellow. The Rann of Kutch shown in this sheet is not thus included in the Karachi or Hyderabad Districts. The boundary symbol (accompanied by the double colour riband) indicates that the Rann of Kutch belonged to the adjoining State of Kutch. The third sheet [Ind. Map B-11], prepared in 1907 and bearing number 93W and 94W, shows a part of the Hyderabad District and its boundary is indicated by the symbol -·-·-·, conveying thereby that the territory lying to the south was not a part of the District. It is significant to note that this territory is described as belonging to Kutch." (Indian Memorial, para. 129.)

The surveyor in charge of this task was C. F. Erskine, Superintendent of Survey. His name appears at the bottom of the above-mentioned Indian Maps B-9, B-10 and B-11. A further sheet, No. 75, was exhibited by Pakistan upon the request of the Tribunal, at a late stage of the proceedings, as Pakistan Map 152. It shows a double-coloured riband and the -·-·-· symbol for State boundary through the Khori Creek and up along the vertical line. This sheet does not cover the area above the 24th parallel but the boundary symbols in it are the same as those in Indian Maps B-9, B-10 and B-11.

In the Pakistan Memorial, Erskine's Survey and his maps are not expressly mentioned but are evidently covered by the observation in Annex F that "the Survey of India in other maps, without any authority in that behalf, incorrectly showed the area of Sind left out of the Sind Revenue Survey [Macdonald's Survey], as being outside Sind, and again without any authority, subsequently put symbols of higher and higher status on the Lines shown as a boundary till it was ultimately shown as the provincial boundary".

Certain of Erskine's maps (Pak. Map 152 and Ind. Maps B-10 and B-11) seem to belong to the groups of maps which Pakistan in its Counter-Memorial (para. 158) qualifies as maps which are a consequence of cartographical confusion and which do not show that for certain purposes the whole of the Rann, and for all other purposes the northern half of the Rann, was a part of Sind.

In its first oral statement, India referred to Erskine's Survey as a fresh survey which confirmed the boundary alignment as claimed by India. It was stressed that in Indian Map B-9, showing the Jati, Badin and Rann trijunction sector, the legend had distinct symbols for "province or State boundary" which was -..-.. (dash two dots dash), for "district boundaries" -.. (dash dot dash), and for village boundaries the same as district boundaries but smaller. The vertical line and the first loop had the province or State boundary symbol. For Indian Map B-10 it was stressed that it had, beside the -.. symbol, a double-coloured riband along the -.. symbol, both together being shown in the legend as the State boundary, and that both appeared on the map around the southern tips of the two loops and the continuation, southward, of the vertical line, in both cases as an accurate continuation of the -.. symbol line of Indian Map B-9. In Indian Map B-11, it was said, the -.. symbol is again explained as the State boundary symbol and it appears along the southern limit of that portion of the second loop which is shown. The headings and other inscriptions on the maps were mentioned. It was pointed out that the heading of Indian Map B-9 reads "Parts of Districts Hyderabad and Karachi". While showing a "province or State boundary" along the vertical line and the first loop, it evidently excluded the shown portions of the Rann from the two Sind districts and thereby from Sind. The same applied to Indian Map B-10. Indian Map B-11 was still more explicit. While Indian Maps B-9 and B-10 had the inscription "Rann to Cutch" over the shown portions of the Rann, Indian Map B-11 had the inscription "Cutch". In other words, while Indian Maps B-9 and B-10 excluded the Rann from Sind, Indian Map B-11 not only excluded it from Sind, but included it in Kutch.

India stresses that all three maps were published under the authority of the Surveyor-General of India.

These propositions on Erskine's Survey were discussed and partly challenged by Pakistan in its first oral statement.

The essential points made in the statement are the following:

(*a*) The Index Map, Sind Survey, reproduced opposite page 29 of the *Surveyor-General's General Report on the Operations of the Survey of India, 1904–05* (Ind. Doc. CCC-2), shows the same rank of boundary along the Khori Creek, the vertical line and the two loops as between the two talukas on both sides of the Dhoro Puran; furthermore, no boundary symbols at all were depicted along the southern edge of Thar Parkar.

(*b*) On a coloured version of Indian Map B-11, filed as Pakistan Map 115, a double-coloured (yellow and purple) boundary followed Erskine's -..-.. symbols (even for a short distance across the Dhoro Puran), but the same coloured boundary was also to be found together with the -.-.- symbols at the western bank of Dhoro Puran, separating Thar Parkar from Hyderabad. These ribands therefore must be either meaningless or incorrect.

(*c*) The inscriptions in the three maps are not consistent. What is called "Rann of Cutch" on Indian Maps B-9 and B-10, where Kutch is nowhere mentioned, changes into "Cutch" on Indian Map B-11. The Survey Department seems not to have been very clear as to what it was doing. It has the inscription "Rann of Cutch" in the first two maps and "suddenly" changes this into "Cutch" in the third map without any explanation. (It might be added that Pak. Map 152, showing the south-western corner of the Rann, below the 24th parallel, is headed: "District Karachi and Cutch State", and the word "Cutch" is written partly over the mainland of Kutch and partly over the Rann of Kutch).

(*d*) The Survey Department, by indicating the Rann as "Cutch" in Indian Map B-11, went beyond the limits of its authority. No previous map had shown Kutch as extending so far to the north. Macdonald did not so show it. He had shown Kutch only to the east of the Khori Creek in the Lakhpat sector. Pullan did not extend Kutch beyond the middle line. In Indian Map B-11, Kutch for the first time comes up to the northern edge of the Rann. Whoever did this acted wrongly. "He had no business, no right and no authority to show it ... So we get to the position that in the official maps of the Survey of India the first clear manifestation of confusion takes place in 1904–05 in the shape of Sheet B-11. There is no authority for the Surveyor General to do so. He was clearly wrong, but if he has done so he was under a misapprehension of some kind or allowed a misapprehension to take effect in the shape of this map." (Verbatim Records, pp. 6892, 6942.)

(*e*) The boundary as shown in these maps does not follow a physical feature, the Rann, as a geographic entity. In Indian Map B-9 (and Pak. Map 152) it is particularly clear that physical features along the vertical line are the same on both sides of the depicted boundary. On the other hand, neither of these boundaries are Macdonald's boundaries (the difference between Macdonald's original Ind. Map B-2 line and Erskine's boundaries in Ind. Maps B-9 to B-11 were demonstrated with the help of a translucent sheet, Pak. Map 116). Erskine's boundary was taken from elsewhere. The General Report for the 1904–05 season explains that Erskine followed Macdonald's pillars where he could find them, but where he could find no thakbust pillars he followed something which he referred to as "settlement maps". These maps were new ones, not those of Macdonald's time, and they differed from Macdonald's village or deh maps.

On this point, Pakistan quoted from several General Reports for the years 1895–1905 and produced samples of original "Deh Maps", which must be the maps referral to by Erskine as "settlement maps". By making a mosaic of them (Pak. Map 129), and underlining the outer alignment of the village boundaries, Pakistan demonstrated their concordance with Erskine's "province or State" boundary of Badin Taluka. It turned out that Erskine, following these settlement maps, to some extent modified Macdonald's line with the result, Pakistan says, that he included in Badin Taluka what was in Macdonald's map outside the settled portion of this taluka or *vice versa*. The most striking case of this kind was the one concerning the tract of land called Sinatri Dhand, at the south-eastern end of the second loop. This tract was incorporated by Erskine in Badin Taluka, while it was outside in Macdonald's Sheet 92 of the Indian Map B-2 Series. From this fact, Pakistan draws the following conclusion:

"... the very fact that the Sind authorities are in a position on their own option, according to the villagers' demonstration to extend or to contract a village boundary shows that this is not a Kutch boundary. It is not possible ... to be doing this. They cannot say that although this was Kutch territory yesterday, today we have decided to convert it into Sind territory; and although this was Sind territory the day before, tomorrow we will make it Kutch territory. It is Sind territory. Where it gets included in a Deh or whether it is excluded from a Deh is their option and is an internal local matter. The very fact of this changing from time to time is proof ... of the fact that the territory on the other side does not belong to anyone else. It is not a possible procedure for the Sind authorities to say that though Kutch is on the other side, without asking Kutch, without informing Kutch, they will encroach upon Kutch territory ... This is not possible ... Kutch has nothing to do with it. Kutch is not consulted! Kutch is not asked; Kutch is not anywhere in the picture." (Verbatim Records, p. 6897.)

The second round of argument was mainly concerned with Erskine's enquiries about the alignment of the Sind–Kutch boundary between Kutch and the Jati Taluka of Karachi District.

India, however, also stated: The above-mentioned Index Map did not show any boundary at the southern limit of Thar Parkar, since that district had not been surveyed. It was only triangulated. It can be seen from the General Report for the season 1895–96, that the "re-survey of Sind was asked for by the Commissioner ... James ..., in 1892, as he stated that the maps of the old survey were defective and completely out of date owing to the 'vast improvements which have been effected during nearly 40 years of British rule'." (Pak. Book 93, p. 18.) India added that there was no major change in the political boundaries, but that the Sind Administration had brought into existence canals, roads, railways, etc., which rendered the maps out of date. Erskine performed an independent check on Macdonald's boundary and reaffirmed that boundary generally. Minor variations between the Macdonald alignment and the Erskine alignment can be explained by two facts: Kutch was not consulted (and therefore the depicted boundary was not binding on Kutch), and the value of the terrain was insignificant. India's case is that the variations are the results of different judgements of two different minds. "As regards two bits of this Rann, Macdonald came to one conclusion and Erskine came to another." (Verbatim Records, pp. 14254/60.)

India adds: The General Report for the season 1904–05 contains an Index Map showing the whole of Sind as surveyed or triangulated in advance; it shows what was the political boundary of the Province of Sind – the political boundary of Sind as conceived by the Government of India. The words "Kutch Agency" are written in the Index Map as going even above the 24th parallel.

When Erskine was at work in the Jati Taluka, a question arose as to the Sind–Kutch boundary. (In Sheet 97 of the Indian Map B-2 Series, Macdonald had laid down a Sind boundary at the western shores of the Khori Creek). Pakistan maintains that the reference in fact was confined to the Khori Creek where an accretion had occurred on the Sind side, and the question arose whether that accretion was or was not to be included in Sind (cf. Ind. Map B-6 of 1898). India submits on this incident: "The important thing to be noted is that Erskine drew the boundary as Sind said it should be drawn, and the question was: would Kutch agree to it? Should we ask its approval? The ultimate decision was: do not ask Kutch, they may claim something to the west of the Khori Creek"

(Verbatim Records, p. 14201; as they in fact did later in the letter of 24 March 1911 from the Political Agent, Kutch, to the Secretary to Government, Political Department, Bombay; Ind. Doc. A-31).

This instance of 1905 has sometimes been referred to as the 1905–14 instance because of its culmination in the determination of the Sind–Kutch boundary 1913–14 (see further thereon Chapter VIII, Section 3).The basic document is a letter from Commissioner Morison in Sind to Lieut.-Col. Abud, Political Agent, Kutch, dated 27 September 1905, which reads:

"I have the honour to address you on the subject of the demarcation of the boundary between the Jati taluka of the Karachi district and the Cutch state. No. 12 party of the Survey of India are at work on that part of the Karachi district and have requested instructions as to how the boundary should be laid down.

"2. The nearest fixed boundary mark which is at present in existence is that at the tri-junction of the Badin taluka of the Hyderabad district, the Jati taluka of the Karachi district and the Rann of Cutch; and the existing topographical maps all show the boundary of Jati taluka to proceed in a straight line almost due south to a point on the northern bank of the Khori creek east of the present *musafir-khana* at Kotri, the boundary from this point between Jati and Cutch being the Khori creek. I have carefully examined all available records on the subject and find that this boundary is in accordance with them. I am therefore prepared to ask Government to sanction it, but, before doing so, have the honour to request that you will ascertain from the Cutch Durbar whether they agree to it. As the survey party will probably be proceeding to field work next month, I should be obliged if you will let me have your reply before the end of October.

"3. I enclose a statement of some of the authorities which support the proposed boundary. I believe the Cutch Durbar built and maintain the *musafir-khana* on the western bank of the Khori creek at Kotri; but this is an obviously convenient arrangement as Lakhpat is far the nearest town and arrangements for crossing the creek can most suitably be made from it; the fact does not, I think, constitute any claim to the land.

"4. I also enclose the revenue survey map of the Jati taluka which shows the boundary as now proposed." (Ind. Doc. AA-9.)

This letter was the subject of long discussions. India submitted with special reference to its first paragraph, that Morison's conception must have been that the "Cutch State" reached the trijunction at the top of the vertical line, while Pakistan maintained that only Badin Taluka, Jati Taluka and "the Rann of Cutch" met at that trijunction.

Lieut.-Col. Abud's answer of 3 October 1905 was:

"I am in receipt of your letter No. 3161 dated 27th Ultimo and Map, regarding the demarcation of the boundary *between Sind and the Cutch State*.

"I do not propose allowing the papers to go into my office, or making any enquiry in the matter from the Cutch Darbar unless you desire me to do so after a perusal of the remarks I now forward, for the following reasons;

"From some remarks that fell from the Diwan when talking to me on another matter some months ago, I am aware that the Darbar claim that not only does the northern bank of the Khori creek including Kotri belong to them, but also the land to the south [should be "north"] and west of this creek. The extent of the claim northwards or westwards was not defined, nor did I for obvious reasons make any enquiry regarding it. The Darbar also claim the whole of the Rann of Cutch and they say they are prepared to prove it and it is certain that this assertion has been made on paper in administration reports and other documents without contradiction or query.

"A demarcation of the boundary to the north and west of the Khori creek would,

it therefore seems to me, raise the whole question of the boundaries of Sind and Cutch, not only there but also elsewhere, and possibly might give rise to prolonged discussion and enquiry.

"The question of this boundary has never been mooted since the conquest of Sind and it seems to me very doubtful whether the advantages to be derived from it would outweigh the trouble, and feeling that might be aroused, by opening the question. Even if the Bombay Sind Connection Railway is made through Cutch the question of the boundary would not, I think, arise, as the jurisdiction over the line would certainly be British, nor would the question of customs demand any enquiry as there could hardly be a station, at which this could be done, in the desert beyond Kotri.

"I will await your reply to this note and if you still desire me to move in the matter of course I will do so." (Pak. Doc. B.113.)

Morison thereupon asked for instructions from Bombay. He wrote on 10 October 1905 the following letter to the Chief Secretary of the Government of Bombay:

"I enclose copies of my letter No. 3161, dated 27 ultimo to the Political agent Cutch and of Colonel Abud's demi-official reply, and would ask for instructions whether Govt. wish me to move further in the matter of the settlement of the boundary between Sind and Cutch.

"The boundary between Sind & Cutch and the question of rights in the Rann of Cutch will have to be settled one day or other, & my opinion is that the sooner the matter is taken up the better. Further delay will only give the Darbar opportunities, now that they apparently are thinking of their claims, to accumulate or even manufacture evidence in their favour. I learn that only last year they collected fees for cutting mangrove from a man who we had licensed to cut mangrove on the Western bank of the Khori creek. It is also surely advisable to have the boundary settled before the railway comes." (Pak. Doc. B.114.)

This was the answer of 23 November 1905 to Morison's successor as Commissioner, Mr. Younghusband:

"Please see Morison's Demi-official letter dated 10th October 1905, *re* the proposed settlement of the boundary between *Sind* and *Cutch*. His Excellency thinks the question might well be left alone till we are forced to take it up.

"That date is not very distant if the Railway goes through Kutch." (Pak. Doc. B.115).

(During the proceedings, Pakistan repeatedly stressed the significance of an attitude often taken by the British to "leave questions alone" or of "letting sleeping dogs lie", as this policy was described in a letter of 27 December 1909 from the Bombay Government to the Commissioner in Sind in respect of the Rao's claim to a territory north-west of the Khori Creek, Pak. Doc. B.12).

With regard to these three letters, once again differences of opinion arose between the Parties. The Parties agree that the only question that was then agitated was confined to the areas north and west of Khori Creek and it had nothing to do with the Rann. According to India, however, that was the only pending question between Sind and Kutch. Pakistan insists, on the other hand, that the question of rights in the Rann was also pending. It was the policy of the British not to bring disputes to a head until forced. The only claim that was forced was the one settled in 1914; the other is still at the "claim stage", as it was in 1905.

Erskine, who had initiated the enquiry, was waiting for a reply. Meanwhile, he had, according to Pakistan, proceeded to make a separate reference depart-

mentally to his own office, the Superintendent, Trigonometrical Survey. The answer of the Superintendent (S.T.S.) is reflected in a letter, dated 2 March 1960, from the officer-in-charge of Survey Party No. 12 to Mr. Rich, the camp officer, reading:

> "This question was referred to the Collector of Karachi early in last recess (May or June); when he gave us no satisfactory reply till August or Sept. last, we then referred it to S.T.S. and he almost decided that the boundary should be drawn straight from a certain fixed and known point in Sh. 73 to another point in Sh. 75, approximately in the old position (because the old mark was washed away by the Sea). It has been so drawn in our fair sheets. This boundary practically agrees with that on the old revenue survey sheets." (Ind. Doc. TA 66.)

India adds: S.T.S. sent the reply to the letter of the Assistant Commissioner, despatching to him a trace showing the boundary between Jati Taluka and Kutch State. The Assistant Commissioner thereafter asked S.T.S. what the line shown in the trace with dash and two dots was intended to indicate and desired him to draw a line on the trace showing the boundary between Sind and Kutch as then indicated in the revenue survey maps of Sind. In reply, S.T.S. informed the Assistant Commissioner that the symbols dash and two dots on the trace represented "the present boundary" between the Province of Sind and Kutch State; he also drew a different line on the trace to show the Sind–Kutch boundary as in the old revenue survey maps. It was after all this correspondence that Erskine showed the boundary between Kutch and Sind in his maps, Indian Maps B-9 to B-11.

Referring to this "incident", Pakistan concludes: On the British side the position was clear up to 1903. In that year the Commissioner in Sind, Mr. Cumine, "considered that *prima facie* the right of the Sind authorities extended to at least the centre line of the Rann" (Pak. Doc. B.112; see on this instance Chapter IX, Section 5). However, a decision by the Survey Department itself, an incompetent authority in matters of political boundaries, was given while a reference to the Government of Bombay was pending. The basic error can be seen in Pakistan Map 152 (Sheet 75). The boundary runs through the middle of the Khori Creek. It then takes a jump and leaves the Kutch coast and comes on to the Jati (Sind) coast. From there, once it has taken that initial wrong step and a double riband has appeared, which finally goes into Sind itself, between Thar Parkar and Hyderabad, the confusion is inevitable. And "[t]he whole 1914 incident begins with sheet 75". Around the years 1903–06, "a kind of short interval of intensified confusion" occurs, and "we see this result". (Verbatim Records, pp. 18368/70–2.) What the Kutch Administration Reports for a long time had repeated, that the Rann belongs to the Rao, appears now for three isolated years in the Bombay Administration Reports, 1903–04, 1904–05, and 1905–06 (Ind. Docs. C-80 to C-82). Furthermore, in a Western India States Agency File of 1934, containing a list of various statements and opinions on the jurisdiction over the Rann and on the boundaries of Kutch, a clerk has quoted an unofficial note – a "U.O. Note" – of the same year, 1905, according to which the Bombay Government considered that "the Ran is included in the State of Cutch, i.e. it forms part of the Cutch State. Jurisdiction over the Rann would, therefore, naturally be that of the State". (Pak. Doc. B.325; other opinions, as for instance that "sovereignty over the Rann of Cutch is vested in

the Paramount Power", that "the thorny question has intentionally been disregarded", or that "Cutch have not got full sovereignty or jurisdiction over this portion [belonging to Morvi] of the Little Run", are dealt with in Chapter VII). Pakistan adds that the "unofficial note" has not been located. Otherwise, it might have been possible to discover in what context this note had been made.

As could be expected, the differences between the Macdonald line and the Erskine line gave rise to discussion; especially as to the status of Sinatri Dhand. Macdonald had placed Sinatri Dhand (or Sanhurree) outside his dash-dot-dash boundary in Indian Map BBB-6 (cf. Pak. Map 62). His intention in this respect is confirmed by the following statement by his assistant, M. Edward Loftie, in "Village Traverses, Main Circuits Nos. 38 and 39, Districts Mahomed Khan's Tanda, Surveyed in Season 1867–1868": "This Deh (Sanhurree) having been transferred to the Runn, its Area has been excluded from that of the Main C[t]." (Official Records, 17th Meeting, para. 2b.) Erskine, however, more than thirty years later, depicted Sinatri Dhand inside the boundaries (Ind. Map B-11 and Pak. Map 115).

India states that its final claim in this sector is based upon the Macdonald line as it is depicted in one of the four atlas maps constituting the mosaic which is Indian Map B-44. The date of the relevant upper right sheet of this mosaic is unfortunately unknown. But this map "has this merit that, whereas the other maps are all made by the Sind Authorities or by the Government of India, here is a map which the Kutch Darbar accepted and therefore you have, so to speak, a double acceptance. Both parties have accepted this map as correctly depicting the conterminous boundary." (Verbatim Records, p. 15301.) The acceptance of the Kutch Darbar is reflected in the letter from the Dewan of Kutch of 21 March 1911 to Colonel Abud, Political Agent, Kutch, in which he showed by a green line on an annexed map (Ind. Map B-44 or the Pak. Resolution Map) "the true boundary between the State and the province of Sind according to the Darbar's contention". (Ind. Doc. A-31.) This letter also is a sign of the Darbar's disapproval of the British omission to consult him on Erskine's boundary. Thus, he writes:

> "The sheet No. 75 [Pak. Map 152]... was prepared as lately as 1906, and in no instance was the State a party to the surveys mentioned or to the delimitation of boundaries thereby, nor has the State ever been consulted as to such boundaries, or consented thereto, or admitted the same to be correct, and not until 1906 was any active claim made by the Sind authorities adverse to the rights claimed by the State, so as to have made it incumbent on the State to actively contest such claims... It is obvious that the boundaries prepared and stated under the circumstances above mentioned cannot be binding on the State without more, and the Darbar therefore refrain from lengthening this representation by the citation of legal authorities to support this proposition." (*Ibid*.)

India submits a statement (Indian Tabular Statement No. 3) in which those maps which follow Macdonald's Survey and those which follow Erskine's Survey are separately listed.

In the first group are the Indian Maps B-4 of 1916, B-13 of 1910, B-18 of 1921, B-27 of 1931, B-30 of 1936, B-36 of 1943, B-37 of 1943, B-43 of 1920, B-44 (see above) and B-49 of 1906. The second group consists of B-14 of 1913, B-16 of 1915, B-25 of 1928, B-26 of 1947, B-32 of 1939, B-38 of 1945, B-39 of

1945, B-52 of 1935, B-53 of 1945 and B-55 of 1943. Of these maps, the following are published under the direction of the Surveyor-General of India: B-4, B-36, B-30, B-18 and B-37 in the first group, and B-16, B-25, B26, B32, B-38 and B-53 in the second. Indian Map B-16 is the Fifth Edition of the 32-mile map of India, and Indian Map B-52 (a map of the Western India States Agency) is reproduced from survey maps with the permission of the Surveyor-General. The local maps are represented by Indian Map B-14 of Badin Taluka.

India draws attention to Indian Map B-26 published under the direction of the Surveyor-General of India in 1931 on the basis of the surveys in seasons 1868–69 and 1904–05, i.e., on the surveys of Macdonald and Erskine, and says that it shows the boundary of Sind and Kutch (States of Western India) as conterminous and also the exact point-to-point alignment of that boundary which is broadly the alignment claimed by India, namely, the northern edge of the Rann.

Special attention was paid to Indian Map B-40 of 1946, referred to by India as a map in preparation of a degree sheet, and described as "Sheet 40 H Mosaic on scale 2 2/3 Mile = 1 inch for reduction to 1/4", and qualified by Pakistan as a "blueprint revision of earlier surveys". The Parties agree that the boundaries in the Sinatri Dhand area are shown as in Erskine's Indian Map B-11, except that the boundary in Indian Map B-40 follows the eastern bank of the Dhoro Puran.

Pakistan exhibits another map, Pakistan Map 79, being the result of a similar "Verification Survey" or "Blueprint Verification Survey". This map covers the area around the top of the vertical line and the first loop. It is a quarter-inch interim edition of 1943, published under the direction of the Surveyor-General of India and bears the following note: "Boundaries in this sheet are approximate and not to be taken as authoritative."

Counsel for India concludes in respect of Sinatri Dhand:

> "...even as regards this particular bit my submission would be in law and according to the terms of the agreement, that it is an ascertained boundary; and it will be your function, if I may say so, to ascertain now, on the evidence on record, which you think is the preferable alignment. In other words, there are two versions of the ascertained boundary, and you will determine which of the two versions of the ascertained boundary is, so far as Sinatri Dhand is concerned, the right one. An ascertained boundary there is, and the only question is – it is just like a disputed question of fact before a court where the court decides on the balance of probabilities as to which is the more acceptable version; and my submission is that you would not be departing from the terms of the agreement between India and Pakistan but, on the contrary would be fulfilling those terms if, on this evidence which we are placing before you, and subject to whatever Pakistan may have to say, you decided whether Sinatri Dandh is to be included in Pakistan or excluded from Pakistan. It would be a case, then, of ascertaining an ascertained boundary but about the exact alignment of which there is dispute. It is a problem which Mr. Justice Holmes described as one involving the pains of choosing at every step. We have tried to put the case fairly before you; we have produced authoritative maps even if they are against us; we have put them in this statement so that by this statement you will know at a glance what are the authoritative maps in our favour and which are against us as far as this little bit of Sinatri Dandh is concerned." (Verbatim Records, pp. 15313–4.)
>
> "Take Sinatri Dhand as a concrete case. You have a boundary here and a boundary there. Very well, what is the preferable boundary? It is not a question of law but a question of fact; either one is mistaken and the other is right, and so on, and that is a

matter to be found by you. There is no question of applying a law there, nor indeed in the matter of the median line is there a question of applying law except only to this extent, that you are asked to say that having regard to the nature of the Rann as alleged by them, the law is that a line runs down the middle." (Verbatim Records, pp. 15463–4.)

"Of course, but it may be that in a particular sector, a little part, you may say 'I am not satisfied that it runs from A to B like this. Let me find on the material where it ran, looking at it circumstantially.' Then you can say 'I find it runs from A to B in a curve', or as you like." (Verbatim Records, p. 15465.)

8. *The Survey of Parts of Sind in 1937–38 (Osmaston)*

Parts of Sind were again surveyed in 1937–38 by the Survey of India. The surveyor in charge was Major G. H. Osmaston. The survey is referred to as Osmaston's Survey.

India has produced as a result of this survey three maps of 1939, published under the direction of the officiating Surveyor-General of India, Sheets Nos. 40 L/S.W., 40 L/S.E. and 40 L/N.E., Indian Maps B-33, B-34 and B-35, respectively. They cover the Macdonald line area in Mithi and Nagar Parkar Talukas from Nahir Vero in Sheet 94 of the Indian Map B-2 Series to the east. The first two sheets reach the 24th parallel. Of the remaining portions up to 71° of east longitude, one is covered by Osmaston's coloured "Plane Table Section" of 1938, Indian Map TB-28, whereas for the eastern part of the Nagar Parkar peninsula recourse must be had to either Macdonald's Sheet No. 96 of the Indian Map B-2 Series, or Pullan's map, marked Pakistan Map 103.

Pakistan exhibits three signed black prints of the area of the above-mentioned sheets – Pakistan Maps 75, 76 and 77 of 1938. India qualified them technically as "ancillary guides".

Indian Maps B-33 to B-35 show a province or State boundary along the northern edge of the Rann, marked with dash-dot-dash symbols and a double-coloured (yellow-bluish/pink) riband. According to the legend, this would be a demarcated boundary. India points out, however, that "demarcated" has three meanings, first, that it is marked by pillars, second, that it is marked by a natural feature, and, third, that it is recognised as accepted, and suggests that the word is used in these maps in the sense that it follows a natural boundary, namely, the edge of the Rann or the track.

Indian Map TB-28 has the same double-coloured riband as Indian Maps B-33 to B-35, but no other boundary symbols, whereas Pakistan Maps 75–77 show no boundaries at all. Indian Map TB-28 also depicts with boundary symbols and ribands a portion of the Jodhpur boundary.

Both Parties agree that Indian Maps B-33, B-34 and B-35 are excellent from a topographical point of view. The Parties also seem to have accepted Osmaston's alignment of the Macdonald line, whatever this latter might represent, as the better one. In Indian Map TB-28, the alignment of the ribands differs at the extreme east from the Macdonald line as depicted in Pakistan Map 137. No explanation has been given for this deviation, but the new alignment appears already in the degree sheet of 1921, Indian Map B-20, and is repeated in the degree sheet of 1943 (Ind. Map TB-3).

Before Osmaston's Survey could start, the question arose to whom requests

had to be addressed in order to obtain the necessary permission for the operations in the Rann. This aspect is referred to in Chapter IX, Section 9.

A convenient starting-point for a discussion of Osmaston's Survey is the meeting of "local officials of Cutch and Wav States and Mukhtar Kar of Nagar Parkar... on 22nd January 1938 at Nagar Parkar to point out the territorial limits of their respective states and British area in the Rann of Cutch where no regular demarcated boundary existed for survey" (from Osmaston's own description in Pak. Doc. B.21). Then follows a period of enquiries resulting in Osmaston's corrections of the "History Sheets" to Indian Map B-33 and B-34, the latter sheet on 10 April 1939, and his "nullification" of Sind's claims to half the Rann, reported in a letter of 24 April 1939. Further enquiries followed in Sind at the instance of the Mukhtiarkar of Nagar Parkar, who in his capacity as First Class Magistrate had to make a decision on his jurisdiction in the Rann in a then pending criminal case. This, finally, brought a new element into the picture, that is the decision of the then officer-in-charge of the survey party, W. H. Strong, on 23 August 1939, to omit the provincial boundary in the Rann of Kutch from the modern survey maps since "the authorities of Sind, Cutch State and Wav State still differ as to its correct alignment..." (Pak. Doc. B.26), followed by the counter-proposition of 2 October 1939 by the Collector of Thar Parkar to the officer-in-charge of the party not to omit the boundary between "the Cutch & the Vav States on the one side and this district on the other", but: "If it is not possible for you to decide the boundary definitely, it may be shown as in the old maps, by means of a special symbol and a foot note made indicating that it is in accordance with the old records, but is in dispute". (Pak. Doc. B.27.)

Leaving aside the question of the Survey Department's competence to deal with boundary disputes, India relies upon the decision of Osmaston in April 1939, upon which the Surveyor-General acted when publishing subsequent maps, while the decision of Strong, made "on the spur of the moment without requisite knowledge" is treated as of "no significance" and of "no value", He had replaced Osmaston only for 108 days. Pakistan refers to Osmaston's decisions as "tentative", representing "an interim view", and states that the final decision of the Survey of India is what Mr. Strong said.

At the meeting at Nagar Parkar the "representative authorities" presented "discordant" territorial claims to the Rann of Kutch (Pak. Docs. B.22 to B.24). Osmaston had deputed Mr. Qureshi to interview the parties. The Karbhari of Wav State claimed the north-eastern corner of the Great Rann. down to a line between Churia on the Nagar Parkar peninsula and Padan in Wav (see the red line depicted in Ind. Map TB-20A), and the Survey Superintendent of Kutch claimed the whole Rann, both making an exception for a small portion of the Great Rann at its extreme north-east, belonging to Jodhpur. (The Parties agree, for the purpose of this case, that the boundary of Jodhpur in the Rann proper is correctly depicted in the "Degree Sheet" of 1921, Ind. Map B-20; Official Records, 133rd Meeting, para. 6.)

It ought to be noted that the Wav claim as laid down at the Nagar Parkar Camp contains a reference to a strip of Suigam crossing the Rann south-west of the proposed Wav boundary between Churia and Padan (Pak. Doc. B.22). This strip or stretch is stated to be situated roughly between the red line from

Churia to Padan, on the one hand, and the track through the Nara chain of bets on the other, as depicted in Indian Map TB-20A. However, the exhibited correspondence with respect to the Rann boundaries in 1938–39 has no indication of any claim from Suigam to a portion of the Rann.

On this question India submits that it seems as though Suigam before Osmaston's Survey had lost its dominion over a strip in the Rann, including several bets, which it had held in 1935 when it sold a small corridor to the Government of India for the purpose of establishing a Preventive Customs Line. This territory of Suigam must have been transferred to Kutch or Wav and formed part of the territory in dispute between these States, a dispute which was still unsettled on 15 August 1947. (The Tribunal observes that the territory in the Rann, which is said once to have belonged to Suigam, seems to be situated outside the area in dispute between Kutch and Wav, as depicted on the Administrative Indices of Indian Maps B-34 and TB-2 to TB-3.)

The claim of Kutch to the whole Rann was presented by the Survey Superintendent in Kutch State at the meeting, as has already been described in Section 5 above.

On hearing the Report of the Superintendent of Kutch about the meeting, the Dewan of Kutch wrote to the Secretary to the Resident for the States of Western India on 5 March 1938, *i.a*, as follows:

> "The Sind representative is also reported to have claimed that half the Rann belonged to Sind. This has caused no small surprise to the Darbar as the boundary between Sind and Kutch has already been determined and shown on the Topographical Survey Sheets. Again, the boundary dispute between the Bombay Govt. and Kutch Darbar was settled long ago, and boundary pillars were erected in 1924 where the boundary was disputed.
>
> "The Darbar therefore consider that the present claim of Sind authorities has no validity and there was never any doubt that the entire Rann belongs to Kutch." (Pak. Doc. B.167/Ind.)

The Mukhtiarkar of Nagar Parkar appeared at the meeting with verbal instructions from the Deputy Collector of Thar Parkar. These instructions are reported by the Deputy Collector to have been:

> "The Mukhtiarkar of Nagar Parkar solicited verbal instructions from me whether he should attend the meeting and if so on what lines he should prefer our claims for the location of the boundary line. Finding no objection to his attending the meeting for the purpose of discussing the question I allowed him to do so with clear instructions not to commit himself as far as possible in any way. I also informed him that our beat extends to my knowledge as far as half of the Rann of Kutch, running between the said states and the British territory; that there were some orders to the effect received some years back from the Collector Thar Parkar which should be laid hands on by him." (Pak Doc. B.230.)

Following these instruction the Mukhtiarkar presented the Memorandum of 31 December 1927, in which Mr. Henderson, as Collector of Thar Parkar, had informed his Deputy Collector "that he should continue to regard half the Runn as belonging to British and half to Cutch". (Pak. Doc. B.20, discussed in Chapter IX, Section 15.) In this written statement, delivered on 22 January 1938, the Mukhtiarkar further said:

> "As decided already, half of Kutch-jo-Runn belongs to British Territory and the remaining half of it adjacent to various states to those State authorities. The words 'should continue to regard half the Runn as belonging to British and half to Kutch' quoted in

the Collector of Thar Parkar's memorandum No. 2813-R dated 31-12-1927 to the address of the Deputy Collector, Thar Parkar, copy attached herewith, indicates that a decision to that effect has been arrived at even before the issue of the memo.

"Therefore half of the whole Runn, adjoining British Territorial area should be located as belonging to British authorities in the Survey maps by the Survey Party of India." (Pak. Doc. B.24.)

The Mukhtiarkar reported on his mission to the Deputy Collector, stating that no definite decision could be arrived at, and requesting "that old Government records lying in the Collector's office may kindly be got searched to find out any Government authority to elucidate this point and if necessary a reference made to the Government of Sind". (Pak. Doc. B.231.)

The Deputy Collector informed the Collector of the claim to half of the Rann made "on behalf of the British Government" (cf. the impression of the Karbhari that the Mukhtiarkar represented the "Sindh Government", Pak. Doc. B.22) by the Mukhtiarkar on the strength of the Collector's Memorandum of 31 December 1927. He added:

"As the question involves an important issue and is likely to be taken up shortly by the Survey of India Department as expressed to me by the Officer in Charge of the Survey Party (Mr. Qureshi), I deem it necessary to bring the facts to your notice for suitable action in the matter. I may however add that the wordings "should continue to regard half the Rann to belong to British and half to Kutch" in your Memo referred, indicate that half of the Rann, ever since the British conquest or at least much before the issue of the said Memorandum, has been decided to be considered as falling within the British territory. Besides that our Magistrates in charge of Nagar Parkar, Diplo and Mithi Talukas have been exercising their jurisdiction as Criminal Courts as far as half the Rann in question. This further supports our claim over the said area as part of the British territory.

"Since there is nothing on my record, beyond your Memorandum in question, I am not in a position to say more on the subject. It may however be suggested that if necessary a reference may be made to the Government of Sind for looking into the Old Treaties between the British Government and the two States concerned.

"It is possible we might get a clue to the location of the original boundary from such old documents which will serve as a strong piece of evidence on the strength whereof we can make out a case for our claim." (Pak. Doc. B.230.)

India points out that besides instances of jurisdiction the Deputy Collector has not found any other support for his claim than the Memorandum of the Collector, dated 31 December 1927, a Memorandum which was "mischievous, and irresponsible ... [and] resulted in one and a half years of public time and money being wasted to no purpose ..." (Verbatim Records, p. 14321.)

On 19 May 1938, Osmaston started a further inquiry, addressing himself to the Resident of the Western India States (a group including Kutch and Wav), i.e., the Crown Representative in these States, and to the Collector, Thar Parkar.

Although, as shown above, this was once suggested by the Mukhtiarkar of Nagar Parkar and the Deputy Collector, neither Osmaston, nor the subordinate Sind officials seem to have approached the Governor or Government of Sind.

Osmaston's two letters, referred to above, indicated that "no regular demarcated boundary existed for survey", and in face of the discordant territorial claims, he asked (i) the Resident to "show... the correct alignment of the external boundaries (1) between Wav and Cutch States and (2) between Thar Parkar District (Sind) and Wav and Cutch States in the Rann of Cutch, to enable us to show these boundaries on topographical maps being drawn in this office"

(Pak. Doc. B.229); and (ii) the Collector to show "the correct alignment of the external boundaries of Thar Parkar Dist. in the Rann of Cutch and also with Wav and Cutch State, with copies of the relevant notifications ...". (Pak. Doc. B.21.)

The Secretary to the Resident at Rajkot answered in a letter of 14 June 1938: "... I am directed to state that as the boundaries between Thar Parkar District, Cutch and Wav States is undemarcated and is apparently in dispute it is not possible to show the correct alignment on the Tracing, which is returned herewith". (Pak. Doc. B.25.) Pakistan stresses the information that the boundary is "in dispute", while India submits:

> "This letter, which is signed by some unknown Major who is Secretary to the Resident, surely cannot be regarded as an authority for the proposition that the Resident to the States of Western India did not know the boundary of the States of Western India. He has approved the boundary only three years ago. ... This Major ... may have been completely unaware of this Map B-52 which has already been approved by the Resident ..." (Verbatim Records, p. 14344.)

The request for investigation in Sind was under consideration for almost a year. Osmaston's letter to the Collector was sent by him to the Deputy Collector. The Deputy Collector in his turn made enquiries to the Mukhtiarkars of Diplo, Mithi and Nagar Parkar. They reported to the Deputy Collector, the Deputy Collector reported to the Collector, and ultimately – on 6 December 1938 – the Collector himself wrote a letter to Osmaston. The Collector also asked for information from the Superintendent of Survey and Land Records in Sind; and Osmaston, like once Mr. C. F. Erskine, entertained direct contact with the Superintendent, and much emphasis has been laid by India on the Superintendent's letter to Osmaston, dated 8 February 1939 (Pak. Doc. B.250).

From these enquiries, the following can be retained. The Mukhtiarkar of Diplo made a thorough search but could not find in the records of his office any authority regarding the settlement of the boundary between Sind and Kutch. The Memorandum of 31 December 1927 was the only guide. The Mukhtiarkar of Nagar Parkar mentioned that there was no notification or other order on record to establish the British claim to half of the Rann. Also, he did not know on what the Collector's Order of 31 December 1927 was based. He added:

> "In fairness however the state authorities [Kutch and Wav] should not claim the entire Rann. On administrative grounds also I will oppose such a claim which will eventually result in the increase of the Cattle lifting cases from the taluka which crime is even at the present moment rampant here. I therefore request that early arrangement may kindly be made for the settlement of the disputed Boundaries specially when there is a criminal case pending in my court on the point of jurisdiction." (Pak. Doc. B.233.)

The answer from Mithi reads:

> "No separate record showing the decision of the settlement of boundary between the state and the British territory is forthcoming in this office. My enquiries from the village staff show that at the strength of the above order they are under the impression that half belongs to the British territory. This portion is a barren and un-inhabited Rann where nothing is produced. The area of the portion under rann is not shown in the total area of the taluka". (Pak. Doc. B.234.)

India stresses that while the Mukhtiarkar of the Diplo says that the Collector's Memorandum of 31 December 1927 is the only guide to trace half the Rann as belonging to the British, the Mukhtiarkar of Nagar Parkar, who attended the meeting with Mr. Qureshi, assorts that there is nothing to support the Sind case

to half the Rann but urges that in fairness and on administrative grounds half the Rann should come to Sind and the Mukhtiarkar of Mithi says that the village staff and authorities are under the impression that half the Rann belongs to Sind because of the Memorandum of 1927 but there is no record to support that Memorandum.

(It might be added that the grazing areas of the Rann, referred to in Chapter IX, seem to be situated mainly south of Diplo Taluka).

The Deputy Collector's letter to the Collector, dated 8 August 1938, refers to the Reports of his Mukhtiarkars and states that he is unable to lay his hands on any authentic document showing the external boundaries of Thar Parkar in the Rann. He reminds the Collector of the proposal of 1875 that the Political Agent, Kutch should meet the Political Superintendent, Thar Parkar and settle the boundary limits (see on this incident Chapter VIII, Section 1). The Deputy Collector's letter then contains the following, often quoted passages:

> "As a matter of fact the Rann is not a paying tract and the barren nature of its soil has made it 'no man's land' and neither the British authorities nor the state officers were over keen for settlement of the boundary line in it.
>
> "In 1927 the question of settlement of the boundary line of Thar Parkar District and Cutch was reopened and it was ultimately decided by your predecessor in his memorandum No. 2813-R of 31.7.27 [should read: 31.12.27], that half of the Rann should be continued to be regarded as belonging to British and half to Cutch. Ever since the issue of the said orders we have been considering half of the Rann as falling within the territorial jurisdiction of Thar Parkar District. But as Rann is not surveyed we cannot put any line with certainty bisecting it accurately on the boundary verification trace.
>
> "It may be added that in olden times and up to 1875, as it appears from the report of the then Mukhtiarkar of Diplo received under his vernacular No. 1309, dated 22nd June 1875... right till today half of the Rann on all sides between our District and the States has been regarded as belonging to British. But in spite of all this, I am respectfully of opinion that in the absence of any documentary evidence in support of our contentions, our case is rather weak; firstly because our taluka and District maps do not include any portion of Rann of Cutch within our District limits and secondly because the Topo sheets of the survey of India which though not authoritative as regards the alignments, do not speak for us.
>
> "In view of the facts stated, I think the only alternative for us is to settle the boundary line either by arbitration left to Survey of India Department or by deputing the Superintendent of Survey and Land Records in Sind to meet the representatives of the two Darbars at Sarzamin to settle the matter with them once for all, unless we are able to get a clue to the location of the boundary line from old treaties or such other political documents..." (Pak. Doc. B.235.)

India strongly relies upon these views of the Deputy Collector. India states that this Deputy Collector was frank enough to say that it was ever since the Order of 1927 that they were considering half the Rann as falling within their jurisdiction, and not before. He said that the Sind case was rather weak because neither the taluka maps prepared by the Sind authorities, nor the Survey of India maps supported it.

The Superintendent of Survey and Land Records in Sind thereupon informed the Collector (and Mr. Osmaston in a copy for information) that "the boundaries as originally taken from the Survey of India maps stand unaltered so far as the taluka maps in question are concerned". (Pak. Docs. B.244 and B.245.)

The Collector, Mr. Hussain, who in a letter to the Superintendent had stated

"that there are no Government orders under which half of the Runn of Cutch is to be regarded as belonging to the British Government" (Pak. Doc. B.242), used the same words as the Superintendent, but without any reference to the taluka maps, when he stated on 6 December 1938 to Osmaston that "the external boundaries of Thar Parkar District stand unaltered as originally taken from the survey of India maps". (Pak. Doc. B.246.)

Osmaston qualified this reply as "rather vague" (Pak. Doc. B.256). However, a long discussion was devoted to this statement that "the boundaries stand unaltered". India refers to it as a significant document, confirming the external boundaries laid down by Macdonald. Pakistan submits, that the reply is "non-committal". The Superintendent (and the Collector) are avoiding the real issue which is being put to them (Sind is claiming half the Rann; where is that half?), and instead sidetrack it: If you ask us to compare our taluka maps with the new sheets, we say that since our maps are borrowed from your sheets we tell you that our maps have not been altered since they were originally taken from your sheets.

In fact, Osmaston was not satisfied with the information given so far. He wrote again to the Superintendent and, after citing the letters he had received from the Superintendent and the Collector, concludes:

> "Under the circumstances the question remains undecided. You may please either send me a full reference (i.e., the number, scale and year of edition) of the Survey of India maps from which you originally took off the boundaries or if such information be not available with you, your office maps in original (as proposed by you in your letter under reference) containing the boundaries, so that necessary information can be extracted from them here in my office." (Pak. Doc. B.249.)

The Superintendent's answer is dated 8 February 1939, and says:

> "I have the honour to state that the boundaries of all the talukas, sub-divisions and districts of the Province of Sind have been reproduced from the Sind topo survey sheets of the Survey of India. In this connection a reference is requested to Government of Bombay order No:10718, Revenue Department dated 4.9.1917, in accordance with which the Photographic Department Poona, was requested under this office letter No: 1299 dated 20.8.1925 to compile skeleton map of the Thar Parkar district from the topographical survey sheets supplied to them by the Survey of India.
>
> "In the case of the Mithi and Nagar Parkar talukas in question, it is however seen that the boundaries of the talukas were reproduced by the Photozinco Office, Poona, from the maps supplied by this office on a smaller scale of 4 miles to an inch. These maps appear originally to have been prepared from the Indian Atlas (4 miles = 1") edition 1871 of the Survey of India.
>
> "The original maps of Mithi and Nagar Parkar talukas referred to above and the map of Thar Sub-division showing the required present unaltered boundaries are herewith forwarded for your reference. It is requested that the maps may kindly be returned in good condition when done with." (Pak. Doc. B.250.)

A sample of the taluka maps referred to in this letter is Indian Map B-29 of 1934 depicting Diplo Taluka and mentioned in Section 5 above.

Now, Osmaston was ready for action. He corrected and finished the History Sheets and he informed the Resident at Rajkot of his conclusions and asked him, if he agreed, to endorse them. His letter, dated 24 April 1939, reads:

> "Subject: Showing of the external boundary between Thar Parkar District (Sind), Cutch and Vav States.

Reference: Correspondence ending with your No. D/213 of 1938 dated 14-6-38.

Sir,

I have the honour to bring to your notice that the Superintendent of Surveys and Land Records in Sind recently sent me his office maps showing the external boundary of Sind and explaining that it runs partly along the limit of the Rann of Cutch and partly along the cart track along this Rann (as shown in blue chalk on the attached chart).

"This agrees with the alignment shown on our previous old maps of the area.

"2. Reading the three local officials' statements (copies already sent to you under my No. 1170/44-B-4 dated 19-5-38, again attached herewith for ready reference), in the light of the above, reveals the following:

(a) Statement, dated 22-1-38, of the Mukhtiarkar, Nagar Parkar is nullified.

(b) Vav does not claim any land north or north west of the Rann of Cutch.

(c) Cutch agrees with the Superintendent of Surveys and Land Records in Sind.

(d) The only dispute is between Cutch and Vav States over a bit of the Rann of Cutch areas (hachured in red on the accompanying chart).

"3. Under the circumstances, it is evident that the alignment of the provincial boundary between Sind and States of Western India, as shown by the Superintendent of Surveys and Land Records in Sind, is correct and undisputed.

"4. If you agree with this view, will you please endorse to this effect on the attached chart and return the same at an early date." (Ind. Doc. AA-14.)

The Parties were not able to find any answer to this letter; therefore, lengthy discussion took place on the question how to interpret the silence on the part of the Resident. India contends that the Resident's agreement was already to be found in his acceptance of Indian Map B-52 (see above), and, furthermore, as "protector" of Kutch and Wav he would have had nothing to add. Therefore, the fact that a particular letter from the Resident is not traceable today does not mean that the authenticity of the Sind boundary as shown by the Sind records and accepted by Osmaston is thereby shaken. The very fact that Osmaston went on publishing his maps showing the Sind–Kutch boundary without any dispute is clear evidence that the Residence must have agreed to it at that time. Pakistan submits that it appears that the Resident did not agree with Osmaston's view and consequently omitted to make the endorsement solicited by him.

As to Osmaston's conclusions, Pakistan points out: firstly, it was not really for Osmaston to decide the question of boundary. Not even the Survey of India is competent to make such a decision. Secondly, Osmaston's assertion of facts as presented by the Superintendent is a misrepresentation. It is inaccurate to attribute to the Superintendent a statement to the effect that the external boundary of Sind runs partly along the limit of the Rann of Kutch and partly along the track. The Superintendent sent taluka maps and he did not say anything of the kind attributed to him. Furthermore, the Collector – in his non-committal reply – said that the state of affairs was as it had always been ("unaltered"), and if it was not settled before, how had it come to be settled now? The policy declaration of the Government of Bombay in 1885 continued to govern the situation until the time of Independence, and it was never departed from. Thirdly, the Superintendent as a "map-maker" could not nullify the statement by the Mukhtiarkar who was the administrative officer in charge of the area in question. The Mukhtiarkar's statement could not have been discarded unless a reference had been made to the Government of Sind and the elected Ministers had agreed.

India agrees that Osmaston had no authority to decide genuine boundary disputes. However, on the evidence before him, Osmaston could not possibly have come to a different conclusion. Only one view was possible. Kutch made a claim, supported by maps. The Collector of Thar Parkar made a claim, supported by no map – not even Sind's own maps or the Government of India maps, and by no Government Order. There are various pieces of authentic evidence, like the 32-mile maps, etc., with which Osmaston was very familiar. He would not, agreed Counsel for India,

> "...repeat all that because he was assuming that the elementary matters were known to the parties with whom he was dealing. Therefore, he said, broadly speaking, that it tallied with the existing maps. He referred to 'The previous old maps of the area'. He said, 'This agrees with the alignment shown on our previous old maps of the area'. It was a broad statement covering all the past maps. My point is that the Government of India did not tell him that there was a dispute; the Government of Bombay did not tell him that there was a dispute; the Commissioner [should read: 'Governor' or 'Government'] in Sind did not tell him that there was a dispute. The Collector of Thar Parkar was the one man who also made a statement afterwards, in the course of evidence which has been collected, that the boundaries remained unaltered, as taken from the Survey Maps". (Verbatim Records, pp. 14414–15/20.)

India adds that Osmaston's conclusions do not amount to a decision on the merits of conflicting claims. He rather treated the Mukhtiarkar's claim as withdrawn or overruled by the statement of the Superintendent.

The Tribunal now turns to the History Sheets and to Indian Maps B-33 to B-35. The following may be retained from the thorough discussion by the Parties of these basic documents.

While the correspondence between Osmaston and the various Sind authorities was going on, the preparation of the maps continued. In view of the meeting at Nagar Parkar, the first History Sheet for Indian Map B-34 referred to the boundary between Sind and Kutch–Wav as "disputed". Pakistan also exhibits three maps on the scale of 70 miles to an inch, published with the permission or under the direction of the Surveyor-General of India. In these maps, Pakistan Maps 35 of 1942, 36 of 1946 and 37 of 1947, the word "disputed" is printed on the boundary between Sind and the States of Western India. Pakistan contends that Osmaston's uncorrected History Sheets had been reported to the Map Publication Office and used for these maps, and that the corrections were not fully implemented even in 1947. India has produced, as Indian Document AA-15, notes in the Office of the Director of Map Publication which shows that the stock copies of the 1938 Edition were in fact corrected, and the remark "disputed" was removed and India says that the original plate was not corrected through oversight and these three maps were printed from the uncorrected plate.

However, on this point no definite answer could be given by the Parties in the absence of a linked file.

On 10 April 1939, shortly before his final letter to the Resident at Rajkot, Osmaston had the observation crossed out that the boundary between Sind and Kutch–Wav was disputed. Instead the following statement was made in the History Sheet:

> "The following boundaries fall in this sheet:

Thar Parkar District, Sind, Cutch State & S.W.I., (or alternatively Vāv State, Sābar Kantha Agency, S.W.I., the boundary between these two states being in dispute, *vide* statements dated 22-1-38, of the Survey Superintendent, Cutch State, and Kharbhari, Vāv State, copies attached)."

It is thereupon said, in the History Sheet, that this boundary

"...was surveyed following the limit of the Rann of Cutch. Regarding verifications, none of the units of the States of Western India disputed it...On the other hand no actual verification was received from the Thar Pārkar, Sind, authorities, *vide* letter No. 6777 of 1938, dated 6-12-38, from the Collector, Thar Pārkar District, copy attached. As a last resort, therefore, the boundary as surveyed, was compared with the (generalised) maps received from the Superintendent of Survey and Land Records in Sind, under his No. 357 of 1939, dated 8.2.39 (copy attached) and found to agree". (Pak. Doc. B.257.)

The History Sheet to Indian Map B-33 seems to have undergone similar changes since a slip pasted over the initial statements on the Sind–Kutch boundary. The statements in the pasted slip are, *i.a.*, that the boundary.

"...was surveyed as following the road along the N. edge of the Rann of Cutch. The reply received from the Collector, Thar Parkar being rather vague...office copies of the maps belonging to the Superintendent of Survey and Land Records in Sind were obtained...Comparison showed no disagreement. In view of the above and also because the boundary follows more or less a permanent feature the demarcated symbol has been adopted on the Fair Sheet". (Pak. Doc. B.256.)

The History Sheet to Indian Map B-35 was signed only in April 1939 and was therefore from the beginning drafted in accordance with the corrected versions of the other two.

The arguments of the Parties with respect to the "corrections" of the History Sheets are similar to those concerning Osmaston's letter to the Resident, dated 24 April 1939. Pakistan adds, however, in direct relation to these History Sheets:

"The Superintendent of Land Records had not stated in that letter [of 8 February 1939] anything to suggest that half the Rann did not belong to Sind. Major Osmaston. however, constituted himself as the authority to decide a disputed claim, and in exercise of that assumed authority, proceeded to treat a letter [from the Superintendent] which had not bearing on the point, as something on the basis of which he, as an arbitrator of the dispute, could give a decision." (Pakistan Final Memorial, para. 184.)

Referring to the corrections in the History Sheets, Pakistan says that Osmaston was anxious to wind up the matter after waiting for more than a year. History Sheets had been prepared meanwhile but no definite answer had come from Sind and he took a kind of arbitrary course just to finish it; he knew that anyhow the boundaries would not be authoritative.

India's explanation of these corrections is this: When a History Sheet is written, it is signed at the time when it is originally prepared but the Director has to sign it before it becomes the final document. After Osmaston signed the History Sheet to Indian Map B-33, certain things intervened before the Director signed it. These things were put in by way of a pasted slip and the History Sheet was brought up to date; a greater degree of formality would have required Osmaston to put a second date after the slip was pasted but nothing turns on his not having done so. The person whose signature counts the most is the Director, who signed after the slip was pasted. The History Sheet to Indian Map B-24 was signed by Osmaston after the correction was made incorporating the intervening events. No such corrections had to be made in the History Sheet for Indian Map B-35 as it was drafted at a later date.

The Tribunal observes that all three History Sheets, as corrected, contain the observations that no boundary notifications are available and that none of the boundaries in question appear in the one inch to one mile map. Pakistan submits that this last information is related to Macdonald's Indian Map B-2 Series, and constitutes an admission on the part of the Survey of India that the symbol with which the Rann is separated from the land in that series does not mark the Sind–Kutch boundary.

India says that the observation that none of the boundaries appear on the one inch to one mile maps is made only in repsect of the internal taluka boundaries.

It was found that the "publication instructions" for Indian Maps B-33 and B-34 were issued in April 1939 by the Director of the Geodetic Branch of the Survey of India and that these instructions did not contain the footnote, later added to all three of Indian Maps B-33 to B-35; "The boundary between Sind and the States of Western India is taken from previous maps." (Official Records, 139th Meeting, para. 9.)

As to the maps themselves, India emphasises that Indian Maps B-33 to B-35, as well as Indian Map TB-28, all of which cover areas lying to the north of the 24th parallel, are headed, the first "Thar Pārkar District. Cutch State" and the other "Thar Pārkar District. Cutch State and Sābar Kāntha Agency". Wav State was at that time included in said Agency. Furthermore, in the Administrative Index of each of the four maps, the Rann area is marked as belonging to "Cutch State", or, in certain places, as being in dispute between Kutch and Wav, both of which formed part of the State of Western India. Thus, Sind had nothing to with this dispute.

The Tribunal finds that the area claimed by Wav, but excluding the area once possibly belonging to Suigam, is marked as "disputed" in Indian Maps TB-2 and TB-3 of 1943, based upon Indian Atlas Sheets, and that this mark, since no other area is so designated, obviously refers to the same dispute between Kutch and Wav which is indicated in Indian Maps B-33 to B-35 and TB-28.

Pakistan's observations on Osmaston's maps are mainly concerned with the reservation in a footnote referred to above. The origin of that footnote will be discussed below. Pakistan's position is that none of the previous maps was regarded as representing a settled boundary between Sind and Kutch or other Indian States. They were not even referred to as such by the officials or authorities inquiring into the matter in 1938–39, i.e., neither Macdonald's Indian Map B-2 Series, nor the 32-mile maps of India, nor the definition of Sind attempted by the Reforms Office of the Government of India in 1935 (the "Index Map", Ind. Map B-45, qualified by Pakistan as the "discarded draft"), nor any other map. These maps did not have the status which India has chosen to ascribe to them.

As to Indian Map TB-28, Pakistan observes that it was signed already in 1938. At that time Osmaston still regarded the Sind–Kutch (Wav) boundary as disputed. Thus there is intrinsic evidence that the coloured ribands were added subsequently.

As already stated, Osmaston on 24 April 1939 informed the Resident on the conclusions he had reached, but a similar notification to the Sind authorities

does not seem to have been made. The Mukhtiarkar of Nagar Parkar in his capacity as First Class Magistrate, who still was anxious to decide his criminal case (see his letter of 25 July 1938, referred to above) therefore wrote once again to his superior, the Deputy Collector, at the end of May 1939, asking for "early arrangement . . . for the settlement of the disputed boundaries to enable" him to take further action on his criminal case. (Pak. Doc. B.251.) This request was submitted to the Collector, who even in August 1939 seemed to have been unaware of any settlement of the boundaries. He therefore in a letter dated 18 August 1939, asked the officer-in-charge of the survey party to inform him "if any settlement has been arrived at and the boundaries fixed". (Pak. Doc. B.252.) The answer by return mail from Mr. Strong who had taken the place of Osmaston during the latter's temporary absence, at Dehra Dun, dated 23 August 1939, has already been commented upon. It is worded as follows:

> "I have the honour to inform you that as the provincial boundary in the Runn of Cutch is undemarcated and the authorities of Sind, Cutch State and Wav State still differ as to its correct alignment, no decision can be arrived at by me. I propose to omit this boundary from the modern survey maps." (Pak. Doc. B.26.)

It appears that the Collector was not satisfied with this state of affairs. He therefore, through his office, referred the question to the Superintendent "for remarks whether the suggestion of the officer in charge Party I Survey of India is free from objection". (Pak. Doc. B.254.) This letter also contains the following crossed out paragraph: "The Collr: is of the opinion that this unsettled state of the boundary is objectionable and steps should be taken to have it settled at an early date". This was in early September 1939, and meanwhile the Second World War had broken out.

The Superintendent gave this advice:

> "...it will not be right to omit the existing boundary even from the survey of India maps, as suggested by the Officer in charge No: I Party Survey of India. In my opinion the proper course will be to show it by a special symbol and make a foot-note indicating that it is in accordance with the old record, but is in dispute". (Pak. Doc. B.255.)

A few days later, on 2 October 1939, the Collector endorsed this suggestion, adding a reference the taluka maps and the Survey of India maps, "the old maps". His letter to the officer-in-charge of Party No. I says:

> "...I have the honour to state that I am of the opinion that it would not be proper to omit the boundary between the Cutch & the Vav States on the one side and this district on the other. If it is not possible for you to decide the boundary definitely, it may be shown as in the old maps, by means of a special symbol and a foot note made indicating that it is in accordance with the old records, but is in dispute". (Pak. Doc. B.27.)

The Parties agree that the drafting of the foot-note in Indian Maps B-33 to B-35, reading "the boundary between Sind and States of Western India is taken from previous maps", was influenced by this letter of the Collector.

The Parties are not informed where the First Class Magistrate finally located the boundary for the purpose of his jurisdiction. Pakistan submits that the question of the limits of jurisdiction remained open until the intiation of the present proceedings before the Tribunal: "This is the first time that the thorny question has in fact been tackled, and with such patience..." (Verbatim Records, p. 7054.) In any event, Pakistan adds, Mr. Strong's proposal on 23

August 1939 to omit the boundary was better founded than Osmaston's earlier decisions, since Strong possessed more and later information.

India concludes: Osmaston resumed charge of the survey party on 1 October 1939, and the maps were not published before the end of November of that year. Therefore, it must have been Osmaston who decided not to insert the words "in dispute" on the maps. "[I]f a request is made inconsistent with the factual position, surely the Survey Department is not bound to put in the word 'disputed' because it makes no sense..." (Verbatim Records, pp. 14512/20) in view of the Collector's previous letter of 6 December 1938.

Osmaston's conclusion that the northern edge of the Rann consitutes the boundary between Sind on the one side and Kutch or other Indian States (or the States of Western India) on the other is confirmed, *i.a.*, in the following subsequent maps: the degree sheets of 1943, Indian Maps B-36, B-37, and TB-2 to TB-4, Southern Asia Series, 1944, Indian Map B-38 (see Administrative Index), India and Adjacent Countries, 1945, Indian Map B-53, the two last mentioned maps published under the direction of the Surveyor-General of India, Road Map of India, 1945, printed at the Survey of India Offices, and the reprint in 1947 of Sind Survey maps, Indian Map B-26.

The Eastern-Most Triangle

As has been mentioned above, the two degree sheets, Indian Maps B-20 of 1921 and TB-3 of 1943, as well as Osmaston's "Plane Table Section" of 1938, Indian Map TB-28, interpreted as India proposes, exclude a small triangle at the extreme south-eastern corner from Sind, if these maps are compared with Macdonald's map, Pakistan Map 137. A similar discrepancy between Macdonald's and Erskine's maps in the area of Sinatri Dhand has been referred to above.

India relies on the modern maps in the Dedriali area (that is where the triangle is situated), while Pakistan submits that the Sind–Jodhpur boundary is correctly depicted by Macdonald (see further Pak. Map 70, signed by Macdonald, and Pak. Map 77 of 1938; both maps without any trijunction), and from the point where that boundary reaches the edge of the Rann, the claimed median line starts.

India and Pakistan both find support for their claims in post-partition Indo-Pakistan demarcation proceedings of 1955–64.

On the creation of India and Pakistan it was agreed between the two Prime Ministers that the border between them be demarcated afresh with pillars, even where previously demarcated. Relevant for this case is what was laid down in the "Minutes of the Meeting held at Lahore and Amritsar from 25th to 28th March, 1959 in connection with the Demarcation of Rajasthan (India) – West Pakistan Boundary." (Ind. Doc. TA 7.) These minutes were signed by Lieut.-Col. Mudaliar and Captain Bedi of the Survey of India, and by Mr. Hasan and Lieut.-Col. Shaukat of the Survey of Pakistan. Of relevance here is a decision recorded in paragraph 1, sub-paragraph (f):

> "Work will commence simultaneously from the North and the South points of this sector working inwards. Boundary pillar No. 274 [of Punjab (I) – West Pakistan] will

be the North point. Southern-most pillar (Lat. 24° 40′ 30″, Long. 71° 06′ 45″ approx) of Sing-Rajasthan will be the starting point for South."

The boundary pillar No. 274 is situated on the Kashmir border. The Indian representatives at the Meeting thereupon found that what was originally typed as latitude and longitude for the southern-most pillar was incorrect. This was therefore corrected and the new co-ordinates (Lat. 24° 41′ 25″ and Long. 70° 05′ 43″) were inserted in ink and the correction was initialled by Messrs. Bedi and Shaukat. In the margin was written: "Ref. Map 40 P". The Parties agree that this reference was to the degree sheet of 1921, Indian Map B-20.

The corrected co-ordinates relate to the new erected pillar 920. The Eastern Terminus, as defined in this case, is a point situated 825.8 metres below pillar 920 on the Jodhpur boundary, as depicted in Pakistan Map 137. At that terminus will sometime be erected pillar No. 921. The boundary between pillars 920 and 921 is understood to follow a straight line.

Pakistan claims that there was a pillar at a place corresponding to the scored-out co-ordinates.

India says that it is not in a position to state categorically whether there is a remnant of a pillar at that particular point but that there are remnants of pillars in the vicinity because various Indian States were concerned with this area over the last several decades.

A dispute arose concerning the wording of the above-cited paragraph sub-paragraph (f). Pakistan put it this way: What is the essence of the agreement of 29 March 1959? Is the fact of the pillar being the southern-most one the essence, or the co-ordinates? There are two more pillars to the south of pillar 920. Therefore, the Indo-Pakistan boundary under that agreement must first reach the southern-most of them (or still more correctly the point where the continuous straight boundary reaches the edge of the Rann), before any deviation can be discussed. India submits: The starting point cannot be the southern-most "physical object, called the pillar". There are so many remnants of pillars in the vicinity. The history of India in this area has been a chequered one over the past several decades. Various States are involved: Jodhpur, Wav, Suigam, Sind. Also village pillars and thakbust pillars have been erected. The location of the starting point from the south was undoubtedly expressed in terms of latitude and longitude. The pillar was referred to because the Parties proceeded on the basis that there was a pillar at that location. But the boundary does not change with the removal of a pillar. The experts not only wrote the latitude and longitude, but the fact that their minds were consciously applied to a particular latitude and a particular longitude is proved by the fact that the originally typed latitude and longitude are scored out and the correct latitude and longitude written by hand.

The background to the following discussion is Sheet No. 2 of Becher's Revenue Survey of Sind in 1850, Indian Map TB-39. This depicts the Sind–Jodhpur boundary down to the Rann of Kutch. "The last or most southerly Pillar defining this Boundary, is at Jessa jee-Ka-Tal 5½ chains [about 100 metres] from the edge of the Runn of Cutch, close by on the East side are three old stones, and to the west a Jat tree, the Pillar is between them. This is the noting on the Sheet." The attention of the Tribunal was also directed to Becher's next

two pillars to the north. Pakistan contends that the positions of these three pillars are correctly shown on Macdonald's map, Pakistan Map 137, as well as on Osmaston's map, Indian Map TB-28. India admits that these three pillars are shown on the two maps, and contends that the pillars as depicted by Macdonald and Osmaston tallied roughly but that Becher's alignment and pillars differed from those depicted in Macdonald's and Osmaston's maps. (Official Records, 167th Meeting, para. 2.) India adds that pillar 920 is "slightly below" Becher's third pillar from the south.

Upon the agreement of 29 March 1959 followed, *i.a.*, the events described below. In an internal letter of 13 November 1959, marked "Top Secret", the Surveyor-General of Pakistan instructed his Director of Field Surveys:

> "In your meeting with Indian Representative at Fort Abbas on 16.11.59, you will insist that the southern-most existing pillar should be taken as the starting point for the boundary demarcation in the Southern Sector. This means that the Southern-most pillar now found during O.C. 5 Party's inspection will be the starting point for commencement of the demarcation in the Southern Sector. In case the representative of Survey of India does not agree, no suggestion be made for starting work from any other point in the Southern Sector. But they should be told in clear words that you will not start work unless the southern-most point is taken as the existing starting point for demarcation in this sector as agreed upon in your April [should read: March] 59 meeting." (Pak. Doc. B.280/8.)

The letter proceeds with a diagram, showing three pillars, one below the other. The upper pillar is described as approximately 24° 14′ 25″ of latitude and 71° 05′ 43″ of longitude; the middle pillar is described as a "pillar found broken and buried in the ground"; and the lower pillar is described thus: "Pillar found existing in October, 59. This point should be taken as the starting point for demarcation otherwise demarcation operation be suspended." The letter ends with the statement: "These are the final instructions." (The co-ordinates of the upper pillar are those stated in Ind. Doc. TA 7.)

Counsel for India qualifies this as a "clear after-thought" and continues:

> "This pillar is found existing in October 1959, but the minutes where they agreed is already March 1959. Is there any doubt that they found this pillar in October 1959 and therefore changed their stand? But now the case is sought to be presented that the stand was never changed. This is what I am objecting to. The stand is clearly, obviously changed because they said they found a pillar existing in October 1959. 'This point should be taken as the starting point for demarcation, otherwise demarcation operations be suspended.' These are the final instructions. In view of this pillar now found in October 1959, they went back on this agreement, and my simple point is just this, that because you have a remnant of a pillar, a buried pillar, which may be a village pillar, a Jodhpur boundary pillar, it does not follow it is a Sind boundary pillar, because Jodhpur has a boundary which does not touch Sind at all." (Verbatim Records, pp. 15151–2.)

After the meeting at Fort Abbas, the Director, Field Surveys, reported to the Surveyor-General of Pakistan:

> "To find out the Indian viewpoint regarding the southern point of the west Pakistan-Rajasthan (India) Sector, this point was raised in an informal talk. Pending decision of the Southernmost point the Indian representative was agreeable to starting work from any pillar north of L 24°–41′–25″ 71°–05′–43″ according to para I.1. (f) of the minutes of the meeting held at Lahore and Amritser from 15th to 29th March 1959 in connection with the demarcation of the Rajasthan (India)–West Pakistan boundary, and not from any pillar south of that.

"No work has so far been started up to 40 miles from the Southern point. If the orders contained in your letter under reference were further pressed, they were prepared for the deadlock and stop the work altogether. This matter may please be taken up by you with the Surveyor General of India immediately." (Pak. Doc. B.280/9.)

The Surveyor-General of Pakistan therefore wrote to the Surveyor-General of India on 30 November 1959:

"I understand from our Director Field Surveys that your Deputy Director, Geodetic and Research Branch is not complying with the agreement arrived at the meeting held at Lahore and Amritsar from 25th to 29th March, 1959 inasmuch as that he is not ready to start the work from the southern-most pillar. I shall be grateful if you will please issue necessary instructions to carry out the demarcation from the southern-most pillar existing insitu." (Pak. Doc. B.280/10.)

The Surveyor-General of India answered on 10 December 1959 by telegram as well as by letter. The letter says, *i.a.*:

"At the March 1959 meeting the Survey of India and Survey of Pakistan representatives agreed in terms of para 1 (f) to commence work in Southern Sub-Sector from

Lat. 24°:41':25"

Long. 71°:05':43"

"In the event of doubt action seems immediately necessary to abide by para 6 (c) of the Joint Communiqué of the Secretaries Conference on Indo-Pakistan border disputes held between August 30th and September 2nd 1958. The demarcation work should be carried on uninterruptedly from a mutally agreed point to avoid wastage in mandays." (Pak. Doc. B.280/12.)

On 21 December 1959 the following telegram was sent from Pakistan to India:

"Pending mutual agreement of the southern-most point orders have been issued to start demarcation from the northern of the three pillars approximate coordinates given in para 1 (f) minutes March 59 Lahore Amritsar Meeting." (Pak. Doc. B.280/13.)

Thus, the demarcation could continue and in a "Summary of Rajasthan (India)–West Pakistan Boundary Demarcation Work from the Period 1.10.59 to 31.3.62", signed by both Parties on 25 April 1962, is to be found: "The last boundary pillar of the demarcated portion has been numbered 920 in the south." (Ind. Doc. TA 90.) The position of pillar 920 is shown in Pakistan Map 135. Its co-ordinates show that it is to the north of the corrected co-ordinates in the Meeting of 25 to 29 March 1959.

However, the dispute concerning pillars to the south of pillar 920 remained and is reflected in the following paragraph of the "Minutes of Meeting held at New Delhi on 12 and 13 September 1962".

"Survey of Pakistan delegates made a reference to para 1 (f) of the minutes of the meeting held at Lahore and Amritsar from 25th to 29th March, 1959 in connection with the demarcation of Rajasthan (India) and West Pakistan Boundary and reference by latitudes and longitudes therein is not the southern-most point, as there exist a number of pillars to the south of this point. Survey of India delegates were amazed at the Pakistani Survey Officers' desire to go back on the agreement already arrived at 3½ years ago, particularly as these minutes were drawn up after considerable thought, deliberation and examination during 1959. The stand taken up by the Survey of Pakistan was totally unacceptable to the Survey of India representatives, who reiterated that the position as indicated in the minutes was absolutely correct. The Surveyor General of Pakistan, however, stated 'that to avoid deadlock the work was started from a northern position – however, the fact remains that pillars do exist to the south of this point along this boundary, which have yet to be demarcated. The Indian delegation categorically refused the

above statement of Pakistani delegation and reiterated that no such pillars exist which have a bearing on this international boundary." (Pak. Doc. B.279.)

A proposal was later made by India "to arrange for the demarcated boundary to be a *de jure* boundary on the ground", to which the Director Field Surveys, Survey of Pakistan in a letter of 24 September 1964 answered, *i.a.*:

"So far as I am aware, the action proposed by you is to be taken by the two Governments and not by the two Survey Departments. ... As you are aware the demarcation of the two existing pillars, to the south of pillar No. 920, actually demarcated, has not yet been done and a reference to Government is, therefore all the more essential." (Pak. Doc. B.280/17.)

Colonel Mudaliar, Director, Northern Directorate, Survey of India, answered to this last proposition in a letter of 17 October 1964 as follows:

"The responsibility of demarcating the entire boundary between India and West-Pakistan rests entirely on us. The two respective Prime Ministers of India and Pakistan have already indicated in 1956 that 'they have agreed to the demarcation of entire boundary between West Pakistan & India and as such on completion of Rajasthan–West Pakistan boundary, we have to take up Kutch–Sind Sector of the common India–West Pakistan boundary. I would request you to meet me as early as possible so that demarcation of Kutch–Sind boundary can be taken up. Also in the interest of expeditious work it is necessary that we commence this work, this field season." (Pak. Doc. B.280/19.)

Pakistan concludes: The correspondence ends there. Events moved in a different direction in this area and within less than three months the forcible adjustment of certain matters began. When this correspondence is viewed in its entirety the conclusion must be that there is an agreed border up to pillar 920, and there is disagreement after that pillar. There is, if not an actual express agreement, a tacit agreement between the Parties that whatever is to be done to the south of pillar 920 has to be settled along with the Kutch–Sind boundary matter. The last letter really amounts to that.

9. *Atlas and Degree Sheets and Maps of Western India States Agency*

The Report of the Indian Survey Committee, 1904–05, Part I contains the following statement on the origin of the Indian Atlas:

"The great work of the Indian Atlas was commenced in 1828. The labours of the topographical surveyors of the Madras Military Institute, based on Colonel Lambton's triangulation, had attracted attention as soon as the results arrived in England, and the necessity for the publication of accurate and detailed maps of India was at once acknowledged. Aaron Arrowsmith, the famous cartographer, constructed a projection for an atlas of India on the scale of four miles to an inch, and published in 1822 an atlas of South India from Cape Comorin to the Kistna in 18 sheets... On Arrowsmith's death the work of compiling and engraving the sheets of the atlas of India was entrusted by the East India Directors to their geographer John Walker, a member of a family of map engravers. Arrowsmith's projection and scale were adopted, and the first sheet of the atlas was published in 1827... Up to 1868 Mr. John Walker, whose health then completely broke down, had completed the engraving of 84 of the sheets. There has always been the highest testimony to the accuracy and excellent style in which the sheets were produced.

"In 1869 the work of engraving the atlas was transferred to India, a carefully selected staff of English engravers having been brought out by Colonel Thuillier. During the remainder of his incumbency of the post of Surveyor-General great efforts were, as already noted, made to push on the completion of this most valuable work, and by 1877 materials for a first edition of the atlas were practically complete. The revision and re-

publication of the sheets has been continuously persevered in since that date, as new material became available." (Pak. Book 89/3, p. 74.)

None of Walker's sheets are on record in this case.

The atlas sheets were all engraved on copper-plate. The Survey Committee found that it would be too expensive and cumbersome to change, alter or make adjustments to this old series. It, therefore, reluctantly proposed to abandon the whole of these atlas sheets, and to replace the sheets of the Indian Atlas by "degree sheets" (*op. cit.*, p. 75). The change took place between 1910 and 1920.

The atlas series were always on a quarter-inch scale, that is, one-quarter corresponding to one mile, and one inch therefore equal to four miles. The degree sheets were on the same scale, and are therefore often referred to as "Quarter Inch" maps. The degree sheets or the quarter inch maps each cover one degree of latitude and one degree of longitude.

The atlas sheet series and the quarter inch or degree sheets produced in this case are all compiled maps.

India produces the following Indian Atlas Sheets: Indian Maps TB-26 and TB-27, both of 1872, and reprints of the same maps, TB-6 of 1916 and TB-7 of 1895, respectively. Furthermore, Indian Maps B-6 of 1898 and B-44, the latter being a mosaic of four sheets of which the lower left sheet is a reprint of 1895 and the lower right is the same sheet as B-6. The dates of the two upper sheets are not ascertainable.

Pakistan exhibits another mosaic of four sheets, the upper two being identical to Indian Maps TB-26 and TB-27, the lower left of 1871, Pakistan Map 134, being the earlier version of Indian Map B-6 and the lower right, of 1890, Pakistan Map 133.

Three differences have been pointed out between these atlas sheets and the subsequent degree sheets. Firstly, the surveyor's name is mentioned in the former but not in the latter. Secondly, there is a legend for symbols, including boundary symbols, in the degree sheets but not in the atlas sheets. Thirdly, there is an administrative index in the degree sheets which one does not find in the atlas series.

The atlas sheets are all stated to be "published by authority of the Government of India, under the direction of..., Surveyor-General of India", while the quarter inch or degree sheets are just "published under the direction of..., Surveyor General of India".

The relevant atlas sheets all have boundary symbols roughly following the Macdonald line, but the same boundary symbols are also to be found between the districts of Sind. Nothing is printed in letters on the maps indicating that the Rann belongs wholly or partly to either Sind or Kutch. In this connection, India draws attention to the Surveyor-General's Circular Order No. 27, which prescribed identical symbols for boundaries of "Province, District and Large Native States".

India emphasises, however, that a yellow riband around the mainland of Kutch and around some bets below the 24th parallel has no boundary symbols (Ind. Map. B-44, Pak. Maps 133 and 134), whereas the corresponding riband along the northern edge of the Rann is coupled with boundary symbols, dash-

dot-dash (Ind. Maps D-44, TB-26, TB-27). Thus, the Rann is excluded from the districts of Sind, and thereby from Sind itself, by a boundary symbol, while it is not excluded by a similar symbol from the Kutch mainland. This situation is still more obvious in the black and white Indian Map B-6 of the Lakhpat region, where Sind (District of Karachi) is bounded off from the Rann by the dash-dot-dash symbol, but no boundary symbols at all separate the Kutch mainland from the Rann.

India adds: The yellow riband around the mainland of Kutch in Indian Map B-44 also runs around an interior marshland in Kutch itself, although it is nobody's case that that marshland is anything but Kutch. The yellow ribands were probably intended to distinguish Kutch mainland from marshland. (Official Records. 135th Meeting, para. 5.) The symbol always has a significance but the riband does not always have a particular significance.

Pakistan submits: While internal divisions of the provinces of British India had to be shown in the maps there was no such requirement in regard to Indian States (nor in fact had they been surveyed by the Survey of India). The inclusion in a map of a riband necessarily means that the territory around which it is put is separated from adjoining territory. Indian Map B-6 is headed: "Parts of Cutch State, the Great Rann and of District of Kurrachee", thus making a clear distinction between the three entities. The yellow riband around the land-locked marsh area on Indian Map B-44, might be explained by the mere fact that that area, south of Banni, once was connected with the Rann, as can be seen in Pakistan Map 134. In Pakistan's Resolution Map, which is another version of Indian Map B-44 (the copies from which the two versions were reproduced were inspected by the Tribunal), the yellow riband around Kutch is of the same width as the purple riband around the districts of Sind. In Indian Map B-44 the yellow ribands seem to be narrower than the purple. In Pakistan Map 133, the purple riband at the small bit of the southern edge of the Nagar Parkar peninsula is depicted without boundary symbols as are the yellow Kutch ribands; however, there is a boundary symbol with the purple riband along the entire northern edge of the Rann depicted in the continuation sheets. None of the atlas sheets or the degree sheets has preferred Erskine's boundary lines to Macdonald's, or a boundary following the interior features of the inlets in Mithi Taluka as do Aitchison's maps and the Second, Third and Fourth Editions of the 32-mile map of India. Nor have they ever, like these latter maps, understood Pullan's broken lines in the Lakhpat area or along the two loops as being boundaries.

In the years subsequent to 1916, there are no more exhibited atlas sheets, but two groups of degree sheets.

The first group contains maps reprinted from portions of atlas sheets with "additions and corrections from extra-departmental information", or similar expressions, and the second group, expressly marked "Quarter Inch", dates from the years 1941–48, with one reprint, Pakistan Map 84, from as late as 1965. The main headings of all these maps include references to one or several of these units: Baroda, Bombay, Rajputana, Sind and, since 1924, "States of Western India". The headings in the left hand corner mention districts, States or agencies.

India presents the following paragraph on "Preparation of Quarter-inch sheets", in the Sixth Chapter of the *Handbook of Topography*, 1917 Edition:

> "All boundaries except the common boundary between reserved, &c., forests shown on the component sheets will, as a general rule, be shown on the quarter-inch sheets. Boundaries in Native States which correspond to those of partitions of British districts may however be omitted, with the sanction of the Superintendent, even when they are shown on the component sheet, if their entry would affect its clearness." (Ind. Doc. TC 62, p. 51.)

The earliest degree sheets exhibited in this case are Indian Maps B-17 to B-20 of 1921. They cover the whole Macdonald line area, north of the 24th parallel. This boundary line, consisting of dash-dot-dash symbols and a double coloured riband, with yellow towards the Rann, is qualified as "Province or State" boundary, distinct from the district and taluka boundaries. All indices to districts mark the Rann as belonging to "Cutch", "Cutch B" or "Cutch Bo", ("B" or "Bo" representing the Bombay Presidency under the political superintendency of which Kutch lay).

Indian Map B-21 is of 1925 and shows a "Province or State" boundary of the same character as the previous four maps, along Sir Creek, the horizontal line and the portion of the vertical line depicted in the sheet. The "Index to Districts" indicates that "Cutch S.W.I." lies to the south and east of that boundary (S.W.I. meaning "States of Western India").

Indian Map B-22 of 1927 is similar to Indian Map B-17 of 1921 (the tri-junction at the top of the vertical line and portions of the two loops). However, a reference to the States of Western India has been substituted for the reference to the Bombay Presidency. In this map and in the subsequent degree sheets the "Index to Districts" is referred to as "Administrative Index".

In Indian Map B-30 of 1936, corresponding to India Map B-18, the word "Cutch" has been added in the border of the map in order to show to which State belongs the continuation of the Rann east and west.

The later Indian degree sheets (Ind. Maps B-36 to B-37 and TB-1 to TB-5), all in black and white and covering the years 1942–43, follow the same scheme as finally adopted in India Map B-30. However, Indians Maps TB-2 and TB-3 also indicate the area in the north-eastern portion of the Rann as in dispute between Kutch and Wav as shown in Osmaston's maps.

As to these maps, all of which refer to the area north of the 24th parallel, Pakistan particularly draws attention to Indian Map TB-5 of 1943 (same as Pak. Map 79), in which this foot-note is to be found: "Boundaries in this sheet are approximate and not to be taken as authoritative."

India answers: This foot-note was inserted out of precaution by the Surveyor-General, which, by contrast, enhances the authority of those maps in which there is no such remark. As to Indian Map TB-5 and Pakistan Map 79, both a result of a "Verification Survey" (see Section 7 above). In that Section is also mentioned Indian Map B-40 of 1946, a mosaic based on observations on the ground and made in preparation for a degree sheet.

Besides Pakistan Map 79, Pakistan exhibits six degree sheets, covering the Rann area below the 24th parallel. They are Pakistan Maps 81 and 85 of 1921, 82 of 1922, 83 of 1947, 86 of 1948 and 84 of 1965 (the last two are still

headed "Baroda, Bombay, States of Western India" and "States of Western India", respectively, and they are published under the direction of the Surveyor-General of India). In these maps Kutch, the Rann of Kutch and the Little Rann are marked separately in the indices to districts or the Administrative Indices. And Pakistan Maps 85 and 86 depict, in the Little Rann, short boundary lines and a division of two bets amongst the States abutting upon the Little Rann. This contradicts, Pakistan says, the Indian proposition that the whole Rann belongs to Kutch. Pakistan Map 86 also indicates: "The boundaries and administrative divisions shown on this map are those existing before 15th August, 1947."

India concludes: The atlas sheets and degree sheets were published for general administrative purposes. In 1913 the degree sheets were also stated to be the "war and manoeuvre" maps (Ind. Doc. TC 79). The Surveyor-General of India – the highest authority for maps – took the responsibility for everything which is on these maps. He also used the best available sources for his information. This is demonstrated by the approval of the Government of Bombay (Ind. Doc. TA 34) of Indian Maps B-17, B-19 and B-20 of 1921. "Rough prints" of these and other maps were on 26 May 1917 sent by the Superintendent, Map Publication Office, Calcutta, to the Secretary to the Government of Bombay, Public Works Department, together with a covering letter, saying *i.a.*:

> "I have the honor to forward herewith a rough print of sheets... made up of Atlas Sheets that are now to be published in Degree form and to request the favour of your having inserted on them any new roads and canals, and the classification of roads checked, a metalled road being distinguished from an unmetalled one by its being drawn with double lines. Any change in boundaries or other additions and corrections may also be shown."

The Under Secretary to Government, Public Works Department, answered on 26 September 1917, as follows:

> "With reference to the correspondence ending with this Government letter No. E-8083, dated the 17th August 1917, I am directed to return herewith duly completed, the marginally noted rough prints received with your letter... dated the 26th May 1917."

The "rough prints" have not been found.

It might also be recalled that in 1917 Sind belonged to the Bombay Presidency and Kutch was in political relations with the Government of Bombay.

India continues: The degree sheets are so authoritative that for the 1929 edition of Aitchison's *Treaties*, which is the only standard book on international treaties that India had, maps were dispensed with because officials and the public could rely, *i.a.*, on the degree sheets. "This is the high regard and high authority with which the Government of India looked upon these quarter-inch maps..." (Verbatim Records p. 14614.)

In this respect, India refers to the following letters (Ind. Doc. TA 37):

(*a*) A letter dated 17 February 1927 from an Officer on Special Duty, Government of India, to the Surveyor-General of India. This letter states, in part:

> "I have the honour to state that a revision of Aitchison's *Treaties* is being undertaken by the Government of India and that the question of the maps to accompany the volume is now under consideration.

"At the last version completed in 1909 the preparation of special maps took a considerable time & the expense was great. The present proposal is therefore that, if possible, maps should be dispensed with altogether in the revised edition. This proposal is on the assumption that the existing 'one millionth' and 'degree' sheets cover all the parts of India and adjacent countries concerned and are readily available to officials and the public. Before however coming to a decision the Government of India would be glad to be informed on the following points:

"Firstly as to whether there are any areas now covered by the maps in the present edition of Aitchison which are not included in any of the up to date 'one millionth' or 'degree' sheets;

"secondly, whether such 'one millionth' and 'degree' sheets which might be found suitable for the volumes of the revised edition could be readily procured by the general public and if so at what price;

"thirdly, as Aitchison's *Treaties* are issued to the general public whether any of these sheets are of such a nature as to preclude their sale to the public."

(*b*) The answer of the Surveyor-General of 14 April 1927, which reads in part:

"I have the honour to forward herewith an index to the sheets on the one-million scale of the India and Adjacent Countries Series, corrected to date, from which it will be seen that modern sheets on this scale cover the whole area comprised in the maps in the present edition of Aitchison's *Treaties*, with the exception of Arabia and Siam. . . .

"I attach an index of the Southern Asia Series, five sheets of this series viz:

"The South Persia (already published), MAJD, MECCA, S.E. Arabia and a combined Aden and Sokotra sheet will eventually replace the Arabia map.

"The unpublished sheets will not however be ready for probably two years and if you consider it necessary, the map of Arabia, as in the existing edition, could be revised and required to cover the intervening period.

"The proposal to utilize degree sheets in lieu of the maps in the present edition of Aitchison's *Treaties*, is impracticable.

"In the first place comparatively few modern degree sheets have been published and secondly the majority of those which have been published are classed as 'for official use only' and are not procurable by the public.

"I attach an index of modern publications on the scale 1″ = 4 miles showing the dividing line between the sheets classed as public and 'for official use only'.

"Maps on the 1/M and smaller scales are all classified as public and are obtainable from the agents in India, England and the U.S.A., a list of whom is attached.

"Map on the 1/M and 1/2M scales are published in two editions.

(1) the political edition printed in colours in which the boundaries are shown by coloured ribands.

(2) the layered edition in which relief is shown by contours and graduated layer tints.

"The political edition is the more suitable for the present purpose; . . .

"The 1/2M sheets (Southern Asia Series) should, when the complete series is available, suffice as a general reference map for Aitchison's *Treaties*, the 1/M sheets being referred to only when a more detailed examination of a portion of any boundary is required.

"If any boundary in British India is required in greater detail, reference should be made to the topographical maps on the scales of 1″ = 1 mile or 1″ = 2 miles.

"In addition to the 1/M and 1/2M sheets, the Survey of India stocks maps of the different provinces of India on various scales, which more or less correspond to the maps in the present edition of Aitchison's *Treaties*.

'These maps may be considered more suitable for the purpose in view than the 1/M sheets."

Thereupon the Government of India decided not to issue maps with the revised edition of Aitchison's *Treaties*.

As to the particular maps, India adds: The degree sheets produced by Pakistan, and showing the area below the 24th parallel, do not depict the Rann as excluded from Kutch. The indices merely show internal separation of different districts of the same State, like the Administrative Index in Indian Map B-30, where a line separates Thar Parkar District from Hyderabad District. There can be no doubt whatsoever about the meaning of the Pakistan maps, particularly if they are compared with the corresponding Indian maps, north of the 24th parallel. No province or State boundary symbols separate the mainland of Kutch from the Rann, while such symbols are depicted all along the northern edge of the Rann. As to Indian Map B-40, India points out that it was signed by Mr. G. H. Khan, the present Surveyor-General of Pakistan, when he was a member of the pre-Independence British Government of India Department of the Survey of India. India admits, with reference to Pakistan Maps 85 and 86 (see also Pak. Maps 102 and 104) that

"...a small bit of the Little Rann was awarded to Morvi under the Sanad issued by the Governor General in Council in 1904 (Pak. Doc. A-8). Some 'bets' in the Little Rann belonged to some of the States, other than Kutch, abutting upon the Little Rann; two 'bets' in the Little Rann were divided between Kutch and other States abutting upon the Little Rann by Government decisions". (Verbatim Records, p. 15491.)

But otherwise the boundary of Kutch lay on the eve of Independence "along the southern and eastern edges of the Little Rann and not *through* the Little Rann". And "[t]he contemporary limits of the District of Kutch within the State of Gujarat in the Little Rann area are along the southern and eastern edges of the Little Rann". (Verbatim Records, pp. 15491–3.)

Pakistan concludes: The atlas sheets never used any symbols intended to be the outer boundary of Sind. They only followed the markings in Macdonald's Indian Map B-2 Series. The degree sheets, of 1921 and later, bring in the boundary symbols. This is not an addition or a correction, it is a substantial amendment, a radical change. Where is the authority for it? This is an achievement of the Survey Department entirely unwarranted by anything. There should have been some reference to the authority under which the change had been made. "Who authorised this change of ribands, the colours, double ribands instead of single ribands, who changed the symbol from the district symbol into a State symbol at the bottom, and so on and so forth, to shift the Kutch band right up to the top." (Verbatim Records, p. 7332.) So far as the Parties are concerned, they never agreed to this boundary. So fas as authority is concerned, there was no notification at any time. There was never anything in the nature of an authoritative warrant for doing what was done. The authority for entering a boundary or changing its classification or alignment has to be recorded in the History Sheets, but none has been produced. Therefore, from the evidentiary point of view, this depiction has no real significance. And, generally speaking, there is no indication that any maps were even so much as regarded as relevant for the purpose of showing the boundary in 1938–39. Osmaston took various

steps to obtain a pronouncement that he could act on, but when none was forthcoming he unauthorisedly and erroneously decided the matter himself.

India also relies on another instance where a map came under special consideration by a high local authority. This time, it was the Agent to the Governor-General in the States of Western India, Rajkot, who took part in the preparation of a map for the 1935 edition of *The Ruling Princes, Chiefs and Leading Personages in the Western India States Agency*. This map, Indian Map B-52, was reproduced in 1934 "from Survey of India maps with the permission of the Surveyor General". Annexed to the First Edition of that book, in 1928, was also a map, Indian Map TB-13, with a reference to 147 States. This map shows numerous State boundaries, with dash-dot-dash symbols, and among them the boundary of Kutch from the Arabian Sea following the Sir Creek, the horizontal line, the vertical line, the northern edge of the Rann, and then crossing the Rann through the Nara chain of bets. The north-eastern portion of the Great Rann, between Jodhpur and Kutch, seems to belong to the Wav State.

On 27 March 1934, the Under Secretary to the Agent at Rajkot wrote the following letter to the officer-in-charge, Map Sales Office in Calcutta:

> "I am directed to refer to the correspondence ending with your letter No. 1590/M dated the 15th February, 1928, forwarding 300 copies of the map of the Western India States Agency (scale 1" = 16 miles approximately) for attachment to an Agency publication Octavo size. This publication is now under revision and the map also required revision in order to show therein the area of the old Mahi Kantha Agency excluding the area of the Danta State and to exclude from the present map the area of the Palanpur State.
>
> "I am therefore to request you kindly to let me know whether such a revised map on the same scale and of the same pattern could be prepared and if so what its cost per hundred copies would be." (Ind. Doc. TA 92.)

Thereupon followed a correspondence between the Director, Map Publication, in Calcutta and the Under Secretary on behalf of the Agent, during which the Agent was given the opportunity to make a "statement of corrections" to a "Press Order Proof" (P.O.P.; Ind. Map TB-29). This statement dealt with, *i.a.*, boundaries (but not with the Sind–Kutch boundary), and one proposition was:

> "It will be better if the boundary colours are continued along the coasts of Kutch and Kathiawar so as to show the boundary of the whole of the Western India States Agency at a glance."

However, this idea to show boundary colour ribands along the sea coasts was not carried out, as being too expensive. (Such a coloured riband all around the States of Western India is to be found in Ind. Map B-27, published in the 1931 *Imperial Gazetteer Atlas of India*. However, the shape of that riband on the Sind side is unusually sinuous for a rather modern map.)

The final product, Indian Map B-52, shows a yellow-pink outer boundary with dash-dot-dash symbols all along the northern edge of the Rann. There are also to be found a great number of boundaries between the 155 States. Wav is in this map completely bounded off from the Rann.

India submits: The boundary symbols as well as the coloured ribands in Indian Map B-52 are all along the northern edge of the Rann of Kutch, clearly showing that to the north lies Sind and to the south lie the States of Western

India. The particular State with which we are concerned here is the Kutch State. The alignment shows broadly where the boundary lies. It is a "generalised" line. Minor details are not shown, and India does not say that nowadays the boundary should go through the town of Rakim ki Bazar, as Macdonald drew the line in 1871.

Pakistan concludes: The spacing of Kutch clearly shows that the Rann is not a part of Kutch. Otherwise, the inclusion of the northern half of the great Rann as a part of the States of Western India Agency would need to be explained. This Agency had no territory of its own. The cutting off of the Nara chain of bets from Wav and Suigam is also in contradiction to the 1897 Resolution, which, although formally only concerned with proprietary rights, came to be implemented in such a way as to attach Nara Bet and Parpantana Bet to Palanpur Agency (including Wav, see Pak. Map 85). Furthermore, in 1938 the Resident of the Western India States, as his title then was, informed Osmaston that "the boundaries between Thar Parkar District, Cutch and Wao States is undemarcated and is apparently in dispute". (Pak. Doc. B.25.) This communication from the same officer represents the later and more considered view. India's argument is that this was done only by a secretary who signed on behalf of the Resident. But all communications were dealt with like that; the secretaries signed on behalf of the Resident. The letter of 1938 was a formal communication from the Resident to the Surveyor and it "nullifies" the effect of Indian Map B-52.

10. *The 32-Mile Map of India*

Among the maps upon which India relies, a very high rank is given to the 1928 reprint of the Fifth Edition of the 32-mile map of India. This map, Indian Map B-16, is called "India and Adjacent Countries", and is published under the direction of Colonel Sir S. G. Burrard, Surveyor-General of India.

India states on this map: This is about as authoritative a map of the political boundaries as exists for the purpose of the present case. It is the map on which the greatest pains were taken, which was the subject of correspondence over decades, because various editions passed among authorities concerned, and which after corrections on minute details emerged as the 1928 reprint of the 32-mile map. India has not been able to find a reprint after 1928. The map shows (*a*) the conterminous boundary between Sind and Kutch, and (*b*) the boundary exactly where India says it lies. Extracts from various documents will, of course, be relied upon, but they do not tell the Tribunal so precisely as this map does exactly what the British Government understood to be the boundary of its possessions. It might be added that Sind in this map is coloured red, which in the "Reference" is explained as representing British India and the Rann of Kutch yellow, explained as representing the "Native States". These colour-washes for British India and the Indian States were orderd by the Government of India as early as 11 May 1907, when the Fourth Edition of the 32-mile map was in preparation (Ind. Doc. TA 72). The Great Rann seems to be divided between Kutch, Wav-Suigam and Rajputana. The Sind boundary at the northern edge of the Rann is roughly that of Macdonald in the Indian Map B-2 Series. It is marked with dash-dot-dash symbols and a double colour, pink-yellow riband. The earlier reprint of this map was of 1922 (Ind. Map TB-23), and Indian Map

B-16 is made with corrections to main roads and railways only. Therefore, the words "Bombay Presidency" are written over the whole Sind–Kutch area, Sind having been a division thereof until 1 April 1937, and Kutch having been under the superintendency of the Bombay Government until 1924. Between 1928 and 1935, when Sind became a province, there was no change. In 1947 the territory marked in red as Sind went to Pakistan. The boundary on this map would tally with the 1914 Resolution Map and with the 1935 Index Map (Ind. Maps B-44 and B-45).

India reviews all the exhibited editions and reprints of the 32-mile map of India, which in official documents is sometimes referred to merely as "the Map of India". This particular map, the 32 miles to one inch map, went through five editions with reprints. The date of the First Edition is not known and does not appear from the record. The date of the Second Edition is known to be 1889; the Third Edition is dated 1898; the Fourth Edition is dated 1908; the Fifth Edition is dated 1915 and reprints of the Fifth Edition are dated 1922 and 1928. That is the main chronology. However, there are some other items which come in between these dates either by way of proof of the edition to be printed or by way of a corrected sheet of an edition already printed. The maps which are exhibited are as follows: first there is Pakistan Map 27, which is the 1891 print of the Second Edition. The Third Edition is dated 1898, which is Indian Map B-50. A reprint of 1901 is Indian Map BB-3. Then came the Fourth Edition of 1908, which is Indian Map B-51. For the Fifth Edition, that is 1915, no less than four sets of proofs were sent by the Survey Department to the Government of India. The first set of proofs for the Fifth Edition was sent in October 1913 (Ind. Map TB-21). The second set of proofs was sent in July 1914, which is exhibited as Indian Map B-15. The third and fourth sets of proofs are dated April 1915 and November 1915, but they are not exhibited because they are not relevant. Then came the Fifth Edition in 1915 (Ind. Map TB-22). There was a reprint of the Fifth Edition in 1922 (Ind. Map TB-23). There was also a reprint of the Fifth Edition in 1928, which is Indian Map B-16 and was the wall map shown to the Tribunal. In India's view it shows the position accurately. India accepts it. It shows the line as recitified in 1914.

Three earlier maps on the scale of 32 miles to one inch have also been exhibited. They are Indian Map BB-1 of 1884, and Pakistan Maps 23 of 1869, and 24 of 1874. Neither of the Parties was in a position to state whether any one of these maps was the First Edition of the 32-mile map of India.

India relies on Indian Map BB-1 in order to show that Sind is bounded off roughly as proposed by Macdonald. Pakistan points out that the Rann in all these three maps is depicted as a separating entity, ribands being found around Sind as well as Kutch. Pakistan submits further: The dot symbols on the Sind side in Indian Map BB-1 and Pakistan Map 24 are also used internally between the districts. Such symbols are not to be found on the Kutch side because Kutch had not been surveyed in the same elaborate way as Sind. In Pakistan Map 24, Macdonald's vertical line is shown, but Sind still extends to the old bed of Khori River and over "the upper lands in dispute", south of Rahim ki Bazar.

On the 1891 reprint of the Second Edition of the 32-mile map (Pak. Map 27), Pakistan emphasises that Sind and Kutch are separated by the Great Rann, the

Rann forming the boundary between the two. The absence of dot-dot symbols and of a riband around Kutch is explained as for Indian Map BB-1 and Pakistan Map 24. In Pakistan Map 27, Pakistan has discovered two errors, that is the adoption of Pullan's broken lines in the Lakhpat area and along the two loops as a boundary. These errors and the peculiar zig-zag boundary of Mithi Taluka, as well as the exclusion of Jodhpur from any portion of the Great Rann were incorporated in the maps annexed to Aitchison's *Treaties* (Ind. Maps TB-20B, TB-20C, and TB-17) and were not corrected in the 32-mile maps until the publication of the Fifth Edition in 1915. And at that time the problem concerning the little bit of land west of Khori Creek had disappeared as a result of the Decision of the Government of India on 11 November 1913.

Pakistan concludes by pointing out the lack of consistency between different publications of the Survey of India. Pakistan Map 27 seems to restrict the area of Sind within the limits of the Macdonald line, while the 96-mile map, Pakistan Map 29 of the next year, 1892, extends it to include both "the delta lands in dispute" and "the upper land in dispute".

India illustrates the importance of the 32-mile maps by the fact that they were used as the basis for the special maps prepared to accompany two different editions of Aitchison's *Treaties*. Two maps of the 1892 edition of the *Treaties* were exhibited (Ind. Maps TB-20B and TB-20C, the former being an "unpublished proof"), and the map "The Balutchistan Agency with Sind", "Specially prepared for Foreign Department" (Ind. Map TB-17), annexed to the 1909 Edition. (This edition was the last one containing maps, see further Section 9 of this Chapter.) India underlines that the Government of India took part in the preparation of these maps (the maps to the 1892 Edition were approved by the Government of India on 18 February 1893; Ind. Doc. TA 66A), and that Sind in all of them has a dot-dot boundary along the northern edge of the Rann and in the two earlier ones also a coloured riband, while for Kutch a coloured riband, and nothing else, is shown around its mainland, and only in Indian Map TB-20B.

Pakistan says: The two maps of 1892 are of the same year and from the same department; therefore it might be presumed that they would show the same thing. Yet in one there are ribands on both sides of the Rann (Ind. Map TB-20B) and in the other a riband only on the Sind side. Another suggested contradiction between these two maps, showing the Rann as a separating entity, and a statistical statement in the *Treaties* themselves, does not seem to be well founded. Only in the 1932 Edition is to be found the statement that the area of Kutch is 7,616 square miles, "exclusive of the Rann of Kutch".

Pakistan continues: In Indian Map TB-17 of 1909 the dot-dot symbols on the Sind side are shared by the internal divisions of Sind as well. That is, as has been said before, a peculiarity of the Sind side, because the British areas had been surveyed in accordance with a regular scheme. Furthermore, it is an exception rather than the rule that boundaries of sub-divisions of Indian States are shown. In the case of Sind the requirement was that district boundaries were to be shown. So Sind was composed of various districts, and each district had its district boundary. The southern boundaries were joined on and hence showed a symbol, but in the case of Kutch, since internal boundaries were not shown, there were no boundaries and hence no symbol on the Kutch side. This rule is of

importance and brings out the contrast. In Chapter Five (1911) of the *Handbook of Topography*, the rule was laid down as follows:

> "The following boundaries should not be surveyed in the field or shown on field sectors except as stated below; when surveyed they will be shown in black by their appropriate symbols:
>
> "Boundaries of sub-divisions of native states except when cleared and clearly defined."

India answers: Even on the assumption that the boundary symbol is confined to British India, it would still be in favour of India because, as the other evidence establishes that there is a conterminous boundary between Sind and Kutch, symbols will be found only along one boundary which will show where Sind ends and Kutch begins, and, that is, along the northern edge of the Rann. India also points out that prior to the Fifth Edition of the 32-mile map of India, the dot-dot symbol was used to denote the district boundary as well as the division boundary.

The original version of the Third Edition of the 32-mile map is exhibited as Indian Map B-50 of 1898. As to this map, India makes the following general remarks: The 32-mile map production was a continuous process: as soon as one edition was finished it was made the foundation and the subject matter for fresh suggestions. The process was a ceaseless process of correction, adjustment, scrutiny, further scrutiny, examination, re-examination, etc.

Correspondence was produced between the Secretary of State for India (London) and the Government of India (New Delhi), concerning the 32-mile map, from 6 December 1889–27 September 1893. The Parties draw the conclusion that the first version of the Third Edition (1898), and possibly also the 1891 reprint of the Second Edition (Pak. Map 27), had been approved by the Secretary of State for India. This correspondence reflects the particular interest of the Secretary of State for India in the sheets "which contain external boundaries and the sheets which contain territory under British control and influence", and the importance that the Government of India attached to "locally recognised" boundaries. It was found that sheets concerning the Western and Northern-Western Frontier of India had been laid before the House of Commons. On 24 December 1892, the Government of India instructed the Surveyors-General that "no map which shows a change in the external boundaries of India can be published by authority, without the previous sanction of Her Majesty's Secretary of State for India". These instruction also contained the rule that "all unquestionably British territory should be washed in pink" and Pakistan submits that this rule might explain why the Rann, in regard to which a question was pending, could not be coloured in the wash that was reserved for only unquestionably British areas.

Indian Map B-50 shows a boundary with dot-dot symbols and a pink riband along the northern edge of the Rann, while no boundary is shown between the mainland of Kutch and the Rann.

Pakistan argues: This map clearly depicts the Rann as a separating entity. The boundary on the Sind side is a pure district boundary. In any event, merely because a map was sent to the Secretary of State for India, who was mainly interested in external boundaries, and he approved it, the status of a territory

could not change from being British to become non-British. And, if there was an error, it remained an error up to the present. It is not as if the map became, by its own force, an authority and converted errors into binding truths.

Similar to Indian Map B-50 is Indian Map BB-3, the 1901 reprint (office copy) of the Third Edition, expressly approved by the Government of India. In the course of the preparation of this map, the Governor-General and Viceroy of India, Lord Curzon, wrote on 25 May 1900 with regard to the India–Afghanistan boundary:

> "To any one reading for the first time this six-year long argument about the various washes with which we ought to colour what we own, or control, or claim, or would like to own, control or claim, the whole thing has somewhat of the nature of the burlesque. It is too late for me now to intervene. Had I been consulted earlier I would never have allowed the map to come out at all. These colours blending in each other, where we are a little dubious about our position; these lines sharp in one place, and vague in another; these hesitating verdicts as to what is and what is not British territory – are of no good to any one in the world. They merely cause amusement to our critics, provide weapons for our adversaries, and lay up future political trouble for ourselves. In my judgment it is a mistake to colour these maps at all. Demarcated boundaries can be marked in them by sharply dotted lines: but washes are a delusion and very often a lie. After the six years' labour that has been spent upon the map, I can yet detect inaccuracies in it from my own knowledge.
>
> "However, all this is past and done. I can only express a hope that, whatever may be required for the internal divisions of India, no further coloured map of the boundaries may be produced. Still more strongly would I lay it down that the Survey Department shall issue no such maps without the recorded sanction and assent of the Foreign Department.
>
> "As regards the Amir [of Afghanistan], to send the map to him would only convert a burlesque into a tragedy." (Ind. Doc TA 70.)

India read this note "for the human interest and the beautiful style", and to show the painstaking scrutiny employed for the preparation of the different editions and reprints of the 32-mile maps. Though Lord Curzon noted that "no further coloured map of the boundaries may be produced" he agreed, after further discussion with the Foreign Secretary, that British India and country under British administration should be coloured pink and Indian States yellow.

The next map to be discussed was Indian Map B-51 of 1908, the Fourth Edition of the 32-mile map (for the first time under the title: "India and the Adjacent Countries"). This map has the same boundary symbols as the maps of the Third Edition and the Rann is still coloured blue with swamp symbols. However, in addition to the pink riband a new, narrow yellow band has appeared along the vertical line, the two loops and the boundary north of Bhara Banni. The double coloured ribands seem to separate the "mainland" of Sind from "jutting out" land in the Rann.

Pakistan says that this is the first map in which portions of the boundary as claimed by India are shown with a double coloured ribbon in yellow and pink, adding, however, that Erskine's maps, Indian Map B-10 and Pakistan Map 115, both of 1907, have a double coloured ribbon in yellow and purple. (Official Records, 163rd Meeting, para. 3.) However, what is relevant is that the map-maker has treated Dhara Banni and "the delta lands" as lands, but has not so treated the Rann.

As to Indian Map B-51, India refers to the following statement by Captain Tandy, Deputy Superintendent, Survey of India, in his *Review of the Boundary Symbols used on the maps of various countries*, 1913:

> "The fourth edition of our 32-mile map is of importance as during its preparation the Government of India subjected the classification of the native states, the tribal areas, and the areas partly under their control to the very closest scrutiny, the distinction between these areas are shown by colour tints and colour ribands; as finally approved the colouring of this map is therefore accepted as authoritative." (Ind. Doc. TC 79.)

India argues: This map was scrutinised and corrected in minute detail by the Government of India and it is just inconceivable that the corrections of the boundary would not have been made if the case of Pakistan were true. India points out that in this map Dhara Banni and the land east of the vertical line has a narrow band as would be appropriate for territory belonging to the Kutch State and that the yellow riband is conterminous with the boundary of Sind.

Pakistan submits that the Fourth Edition is authoritative in the limited sense that, departmentally, subordinates were bound to follow these colours. But the Surveyor-General could not lay down a law binding on all and determining the status of British and non-British territories. The approval was for colour, and colour alone, but since one cannot get colour approval without giving the entities shapes, the higher authorities had to take care because so far as the outside world was concerned, there might be a commitment; external boundaries accordingly had to be verified before the maps went out.

When the Surveyor-General by letter of 27 October 1913 submitted 12 hand-coloured proofs of the Fifth Edition of the 32-mile map to the Government of India (Foreign and Political Department) for approval, he reminded the Government that "the boundaries and system of colouring employed on the 4th edition was subjected to a close scrutiny by you in 1908".

The Foreign Department answered on 31 March 1914, and Pakistan stresses the inaccuracies in the proofs submitted and the subsequent edition by quoting the first paragraph of that answer, which reads:

> "The Surveyor-General points out that the map has already been engraved (? on steel) and that it will, in consequence, cause considerable trouble to make corrections. The situation is unfortunate, as experience of past editions has shown that there always are considerable corrections to be made to a proof. Two difficulties confront us: either to present to the public a permanent map which we know to be inaccurate in parts (some of the inaccuracies are no doubt of little importance, but others are of greater moment) or to delay publication and occasion trouble to the Survey Department with the object of getting out a map as up-to-date and accurate as it can be." (Ind. Doc. A-30.)

Anyhow, the Foreign Department prepared a "painstaking and exhaustive" note and the preparation continued. Amongst the remarks from the Foreign Department, the following was particularly discussed by the Parties: The Surveyor-General had pointed out that "colouring in Cutch has been changed" and given as reasons: "Wet Rann has been coloured blue on this edition [the new one] and Dry Rann with the land colour (yellow)." The remarks of the Foreign and Political Department were: "It appears more correct to colour the Dry Rann as a marsh than as a lake and the present colouring may be approved".

India drew attention to the fact that these comments on the Rann were all

made under the heading: "Colouring in Cutch has been changed", indicating that the Rann was shown as land in yellow colour as a part of the Indian State of Kutch, while Pakistan emphasised that it was the colour of land as distinguished from the colour of water, the propriety of which was under particular consideration, and not whether it was to be the colour of this or that particular land.

The Foreign Department also suggested that the map should be altered according to the sanction given in November 1913 "to the cession to the Cutch State of a tract bounded by the Sir Creek up to a point a little south of the 24th parallel". Under this point, the Surveyor-General had only proposed to alter the boundary between "the Rann of Cutch and Sind", previously shown "along north of Khori Creek" to be "shown down the middle of the creek". To this the Foreign Department answered: "Under recent arrangements the Khori Creek no longer forms boundary between Sind and Cutch". Thereupon follows the passage just referred to on the cession of a tract to Kutch. Pakistan argues that, although the Foreign Department correctly referred to the boundary along the Sir Creek as a Sind–Kutch boundary, there was no sanction or approval of a Sind–Kutch boundary along the northern edge of the Rann. However, the situation seems to have been misinterpreted, which led to confusion.

As has already been stated, four proofs were made for the Fifth Edition of the 32-mile map and comments were asked not only from the Foreign Department but also from the Home Department and the Railway Department.

The final product, Indian Map TB-22, as well as the reprint of 1928, Indian Map B-16, are for the purpose of this case similar. The boundary from the Arabian Sea, along the Sir Creek and the northern edge of the Rann is marked with dash-dot-dash symbols and the double coloured ribands are purple-yellow in Indian Map TB-22 and pink-yellow in Indian Map B-16. The Rann is marked as a marsh, with yellow colour except for a few bluish spots.

The reprint of 1922, Indian Map TB-23, is a physical map without washes over administrative units or coloured ribands. However, the same dash-dot-dash boundary is to be found in Indian Maps TB-23 as in TB-22 and B-16.

India concludes: In all the four editions of the 32-mile maps which have been produced, the purple or pink colours of Sind have stopped at the northern edge of the Rann. And a boundary has always been depicted there: on the Second and Third Editions with dot-dot symbols and a purple or red riband, and on the Fourth with the addition of a yellow riband at certain spots. In the Fifth Edition the boundary symbols are dash-dot-dash and a double coloured riband all along the northern edge of the Rann. In none of these editions has a boundary been depicted around the mainland of Kutch, and when the Rann in the Fifth Edition finally is given a land colour (with swamp symbols), instead of the light blue one, it has been coloured yellow, which necessarily implies that it belongs to Indian States. Therefore, if any ambiguity ever existed, which India denies, as to the conterminous nature of the boundary and to the fact that the Rann belonged to Kutch, then these points are made clear beyond doubt by the Fifth Edition.

The Sixth Chapter (1917) of the *Handbook of Topography* states expressly that "the colouring [dark pink] of the most recent edition of the 32-mile map of India must be accepted as the authority for the definition of the [purely British Territory]". (Ind. Doc. TC-62.) After the 1922 reprint of the Fifth

Edition, finance being the predominant consideration, only corrections to main roads and railways were made. Finally the Government of India decided to discontinue the publication of new 32-mile maps. However, in the normal course, corrections were collected, and Indian Document TA 36 shows that, between March 1922 and September 1923, corrections were invited and received from the Government of India, local Governments (like the Government of Bombay), and Commissioners (such as the Commissioner in Sind), but the boundary between Sind and Kutch was not commented upon or sought to be revised, although the Commissioner in Sind commented on certain changes in the internal boundaries. The chronological proximity of the 1915–28 maps to important historical events might be noted. First, the Fifth Edition of 1915 came on the heels of the 1914 Resolution, which resolved the dispute between Kutch and the British Government. The Fifth Edition shows the Sind–Kutch conterminous boundary as it is shown in the Resolution Map, Indian Map B-44, and the purple line is the conterminous boundary, as India has submitted. Likewise the proximity of the very last 32-mile publication, namely, the 1928 reprint, to the creation of the Province of Sind is noticeable. The distance here is longer, though not over-long – it is seven years. After seven years, when Sind was created into a province, it was the boundary shown in Indian Map B-16 which became the boundary of the Province of Sind and it is this boundary which is reproduced on the Index map, which is Indian Map B-45. The same concept of the boundaries is reflected in the Third Edition (1928) of the *Map of India and Adjacent Countries*, on the scale of 1:1,000,000 (Ind. Map B-25), and the map illustrating the position of ports owned by Indian States (Ind. Map B-28), included in the Report of the Indian States Inquiry Committee (Financial) of 1932, presented by the Secretary of State for India to the British Parliament. (Other subsequent maps recognising the Rann as belonging to States of Western India are mentioned in Sections 8 and 9 above.) During the 1938–39 controversy, the Superintendent of Survey and Land Records in Sind stated that "the external boundaries of Thar Parkar District stand unaltered as originally taken from the Survey of India maps" (Pak. Doc. B.245). Osmaston himself remarked: "this [the external boundary of Sind] agrees with the alignment shown on our previous old maps of the area" (Ind. Doc. AA-14). The 32-mile maps would be included in the maps referred to in the quotations. In the presence of all this, it cannot be said that the boundary was depicted without authority, or that mistakes were committed and no one noticed them, but just went on copying the mistakes mechanically, year after year.

India sums up by formulating the points arising from the examination of the 32-mile map series as follows:

(*a*) The 32-mile map is the authority for the definition of the area of British territory.

(*b*) It was minutely examined and scrutinised by the Secretary of State and the Government of India and shows the Sind boundary along the northern edge of the Rann.

(*c*) The boundary of Sind and Kutch is shown as conterminous.

(*d*) The Rann is shown as a swamp or marsh belonging to Kutch.

(*e*) Any ambiguity on points (*c*) and (*d*) above is cleared up beyond any doubt by the Fifth Edition, 1915, which is Indian Map TB-22 and by the 1928 reprint, which is Indian Map B-16.

Pakistan concludes: The earlier maps themselves show that the dot-dot boundary along the northern edge of the Rann only is a district boundary. This is confirmed by the following statement made by the Surveyor-General on 27 October 1913 when he submitted his first set of proofs for the Fifth Edition to the Foreign Department:

> "In compliance with the Map Publication Order No. 39, the rather indistinct dotted boundary used on the 4th edition for district boundaries has been changed throughout on the new map to a fine bar line, which is the symbol used for such boundaries on all our other scale maps." (Ind. Doc. A-30.)

However, the question as to how the district boundary symbol changed into a dash-dot-dash State or province boundary symbol in the interval between the Fourth and the Fifth Editions remains open. No reference appears to have been made to the Government of Bombay as was required according to the prevailing rules. Thus, paragraph 136 of Chapter XI (1936) of the *Handbook of Topography* provides:

> "32-mile map. This is an engraved map in 12 sections. It has always been a popular map and is a very important one, for it is the largest scale map showing India as a whole. The boundaries on this map carry the approval of the Foreign and Political Department of the Government of India for the classification of boundary symbols and colour ribands used. No change whatever should be made in the external boundary of India, in international boundaries and in tints without the formal approval of the Foreign and Political Department. Changes in other internal boundaries, especially those concerning Indian States, should always be approved by the Local Government concerned. This map is the departmentally accepted authority for the colouring of boundaries."

[This rule was already inserted in Chapter V (1911) of the *Handbook* in this form:

> "In case of a difference of opinion, the course of the boundary, as pointed out by each of the authorities, should be independently surveyed and the matter referred to the proper authority... In the case of boundaries of native states and tribal territories in political relations with Local Governments reports will be similarly referred to the Local Government concerned".]

Still more important is the following aspect of the case; in the political system of the British, no territory or territorial right that had once become British territory or British territorial right could cease to be so until the British Crown by a conscious, deliberate and unequivocal act made a formal transfer of it according to a constitutionally recognised mode. Perhaps even the Crown could not do so in peacetime without the consent of Parliament; but that has not been fully settled.

Moreover, there remains some doubt as to the correct reading of Indian Map B-16. The name "Cutch" is spaced so as to cover only the mainland of Kutch, while the name "Rann of Cutch" is spaced separately so as to cover the Rann proper and a part of the lower delta lands. There is intrinsic evidence of the unreliability of the internal boundaries of the 32-mile map. It is admitted in the Fifth Edition that the alignment in all the earlier editions was incorrect, because that alignment is modified in it. If the alignment in the Second, Third and Fourth Editions could be found to be incorrect later, so too could the alignment

in the Fifth Edition. The Department of Survey of India remained unclear as to the position in the disputed region, as is apparent from the inconsistencies between the 32-mile maps, the atlas series and the various other maps published by them. To the confusion the only answer given by India is: this is not a possible hypothesis, you cannot postulate a century of error. It has stood the test of time. But all errors until they are rectified stand the test of time. Centuries pass before certain errors are detected. Pakistan admits that the Survey Department is authorised to draw boundaries. But it can only depict what exists and cannot finally prescribe the authority of a map. Its maps leave the true limits of sovereignty untouched. The determination of a boundary has to be made by some competent authority. Actually, in order of precedence or in the hierarchy of prestige, the Survey Department was on a fairly low level, compared for instance with the Civil Service of India.

Pakistan adds: If India were right, the first and perhaps only source to be consulted for an answer to the question whether a territory was British or not, would be the 32-mile map. Yet when the Collector of Thar Parkar in 1898 wrote to the Commissioner in Sind, he did not refer to the Second (and Third) Editions of the 32-mile map. He stated, *i.a.*:

> "I have been unable to ascertain that the exact boundary has ever been laid down & I therefore left the matter open thinking the decision of Govt. on the 'Beyt' question [of 20 December 1897] would settle it. But as it has not done so, I am obliged to refer the question to you.
>
> "Formerly it seems [the question of the boundary] never arose.... The old arrangement worked well enough practically & the Rann itself (apart from the 'Beyts' in which there were more or less valuable rights to be contested) has been looked on as a 'no man's land' in which on our side at least we have maintained order." (Pak. Doc. B.315.)

And in 1926, when the inhabitants of Vingi and other villages in Diplo Taluka put in their application, that application was entertained by the Commissioner, but it did not occur to the Commissioner to say, I do not have to bother about it, let me look at the 32-mile map, that is the authority for the determination or definition of British territory. Instead, without even thinking of the 32-mile map, he marked it to the Collector (Henderson). It did not occur to Henderson that the 32-mile map was the source of the answer, that it was the authority for the definition of British territory, and that he only had to look at it. He consulted the Superintendent of Land Records; India has called him an expert and a keeper of maps. The latter took the position that the taluka maps did not include the Rann, but he did not answer the question with reference to the 32-mile map. During the 1928–39 controversy also, no one referred to the 32-mile map. Finally, and most important: In 1913, the Government of Bombay attached weight to the evidence of jurisdiction, and, holding that Kutch had proved that it had been exercising jurisdiction in a part of the area claimed, brushed aside the maps produced by Sind. In respect of the value attached to the exercise of jurisdiction in the British political system, this instance is a precedent. In respect of the value attached to maps in that system, this instance is again a precedent. Sind was relying on the survey maps, particularly the Indian Map B-2 Series. The Second, Third and Fourth Editions of the 32-mile map of India were in existence. However, they were never referred to, showing that the status that India has chosen to give to them in its second oral argument, which

was not even claimed in the Indian Memorial, is not the status that attaches to the 32-mile map, nor could it be attached really to any map. The boundary of a State is nothing but the limit of the extent of its sovereignty. Therefore, the maps have to yield to the exercise of jurisdiction.

MR. BEBLER'S PRESENTATION OF SECTIONS 4 TO 10 OF CHAPTER V: SURVEYS AND MAPS

4A. *Pre-Survey Maps*

For Pakistan's case some pre-survey maps (i.e., maps prior to 1871) are of paramount importance. The controversy about their significance and value as evidence is, therefore, one of the first magnitude.

Pakistan submitted 33 pre-survey maps. India submitted three pre-survey maps (Ind. Maps TB-16(a), TB-16(b), B-54 and BB-5) but states that India relies upon these maps for a limited purpose only; for the question of the boundary between Kutch and Sind India relies only on the survey maps, as it is India's case that they alone accurately represent the facts regarding the boundary; it was not the purpose of the three pre-survey maps nor was it their object to show the boundary between Kutch and Sind. Thus, it can be said that the pre-survey maps are merely Pakistan's argument.

Among the pre-survey maps the greatest emphasis of Pakistan is put on two maps: Pakistan Maps 1 and 4.

The first of these maps is a map drawn by Henry Pottinger after his marches through some of the western portion of Kutch and Sind, before the British conquest of these lands (Pak. Map 1). He prepared and published in London a map of Baluchistan and Sind with parts of Kutch, Siestan, Khorasan, Persia, etc. in 1814. He was then a Lieutenant in the Bombay Native Infantry. Pakistan's Leading Counsel stresses that the author of the map was an outstanding personality, soldier, diplomat and administrator, at the end of his career Lieut.-General and Governor of Madras (1848–54); he was well acquainted with Kutch where he served at various times including a period from 1820–34 when he was President of the Regency Council; he served also in Sind (as a Political Agent); yet, although the map submitted was made in 1814 while some of his connections with the area were made later in date (he was Political Agent in Sind in 1836–40) and ". . . he had ample opportunity to say: this is not correct. . .", yet he did not do so and it, therefore, ". . .must be assumed that Pottinger was throughout of that opinion which he has expressed pictorially, namely that the boundary between Sind and Kutch ran "just below the 24th parallel", along an artificial line through what is described as "the sandy desert". (See Map 1 in Vol. III; Verbatim Records, pp. 4388–92.)

India points out the various inaccuracies in the map of Pottinger, especially the most evident ones – that not even the Rann of Kutch and the bets in it are shown, that the alleged boundary line is a straight line drawn with a ruler, ending abruptly, and that Sindri which was unquestionably a part of Kutch is shown deep inside Sind. Pottinger prepared his map principally to show the routes followed by him and others. He had a limited direct knowledge and the various

points lying outside these routes are mentioned by him in the map on the basis of hearsay and not on that of personal observation and actual survey.

Pakistan says that "the inaccuracies of geographical detail that might be removed by a more scientific survey, however, have no bearing on the correctness or otherwise of the pictorial representation on a map, that a political boundary exists between the two States in the middle of a physical feature that separates the mainlands of the two States". (Pakistan Final Memorial, Annex Q, p. 79, quoted at Verbatim Records, p. 4427.)

The second of these maps is a map published in 1826 in London by one Smith (Pak. Map 4), as a "copy of a portion of Map of India". (See Map 2 in Vol. III.) It shows, like the above-mentioned one, the Sind–Kutch boundary as running roughly half across the Rann.

The Indian Counter-Memorial (Part III, Sub-Section [2]), points out that the map is a compilation by "a private agency and cannot be treated as authoritative or indeed of any value. . ." Besides, India stresses, as in the first case, inaccuracies such as the fact that "prominent landmarks" in the area, f.i., Allah Bund, Sindri Lake, Rahim ki Bazar and Lakhpat, are not depicted in this map and that the topographical features differ widely from those shown in the earlier and later maps.

India mentions also that this map does not agree with the previous one.

Pakistan stresses that the particular quality of the map is the fact that its date is close to the date of the British–Kutch Treaty of 1819 and that it could be considered as contemporary. It was prepared by a reputable company of cartographers, Charles Smith of London. (Verbatim Records, p. 4447.)

These two maps are the only two maps submitted to the Tribunal that show the boundary line in the middle of the Rann. They were for this reason the great asset of Pakistan.

The rest of the pre-survey maps are submitted by Pakistan for several other purposes.

(*a*) One seems to show the Rann more closely connected with Sind than with Kutch;

(*b*) Many show the Rann as a "separating entity", i.e., as belonging neither to Sind nor to Kutch but separating the two;

(*c*) Some show what Pakistan called "the lower delta lands", "the upper lands" and the "jutting triangle" as belonging to Sind;

(*d*) Some show the Rann as a body of water;

ad a) The map seeming to show a boundary separating Kutch from the Rann, while no such boundary appears between the Rann and Sind, is signed by A. Arrowsmith, "Hydrographer to his Majesty the King", and dated 1822 (Pak. Map 2).

The Leading Counsel for Pakistan said about it: ". . .Sind, spelled as Cind, can be seen though the map itself is just confining Kutch with a riband, you find Cind in fairly clear terms. It might mean that the Grand Western Runn is included in Sind, but in any case it is excluded from Kutch. . ." (Verbatim Records, p. 5221.)

A controversy arose about the value of this map in which a publication entitled *Historical Records – Survey of India* by Colonel Phillimore, published in four volumes in 1945, 1950, 1954 and 1958 respectively, is quoted by both sides. The author is quoted by India where he refers to a high Government official, White, who wrote from Delhi in 1808 that Arrowsmith's map published in 1804 was "shamefully inaccurate" with respect to the country west of Delhi: where he quoted Lambton, "the father of the trijunctional survey of India", as saying that "it is mortifying to see so beautiful a map (Arrowsmith's map) replete with errors"; and where he says that the German geographer Klaproth described Arrowsmith as "the most ignorant of all those who are employed in constructing maps". (Vol. III, p. 287.)

Pakistan, on the other hand, found the same Phillimore writing that "Arrowsmith. . .as he had access to the geographical materials in the India House. . . availed himself of it with much success." And the then Surveyor-General of India, John Hodgson, wrote: "The map of Arrowsmith though. . .far from correct. . .and exhibiting great blanks, I consider as the best hitherto published. . . I am preparing a map from the more recent surveys, which will diminish the value of Arrowsmith's map but for the time being Arrowsmith's map is the best available from the best materials." (Verbatim Records, pp. 4431–42 and *Historical Records – Survey of India,* Vol. III [1954 ed.], pp. 288/89.)

ad b) Of the maps that show the Rann as a separating entity, a group of six maps are maps produced by John Walker or by John Walker and his brother Charles Walker. John Walker was a geographer of the East India Company. (Pak. Maps 9, 10, 13, 14, 17 and 18. Pak. Map 10 is Map 3 in Vol. III.) The maps date respectively from 1842, 1844, 1850, 1851, 1853 and 1857. They are all similar in the essential points, i.e., they all show the Rann as outside both Sind and Kutch. Two of these maps, the ones of 1850 and 1851, carry a legend which shows the political boundary of Sind of the northern edge of the Rann. There is no legend on these maps regarding the boundary of Kutch. The same two maps completely omit Nagar Parkar. The Rann is shown with a symbol on three of them which is controversial. Pakistan called it a symbol that showed the Rann as a "marine feature" while India said that it was "somewhat nondescript; it is not the sea, because the sea is not coloured in the same way, but it has a special colouring of its own". The special colouring was made by broken horizontal hachures. India considered such a symbol to be appropriate for a marsh.

The debate on this group of maps turns on the qualifications of their author and the quality of his work.

India stresses the circumstance that Walker never really surveyed the region and even did not visit it. It points to discrepancies between the maps, f.i., that some show the lake at Sindri while others do not, and that some show this lake as outside Sind, while others have it half in Sind and half outside. These differences appear in the last two maps although both are from the same year, 1857. The Luni River is shown in different maps on different spots.

Pakistan stresses that Walker was the founder of mapping in India. A book entitled *A Memoir on the Indian Surveys* (Pak. Book B.87/1) by Clements R. Markham is quoted where Walker is called "the veteran geographer of the East

India Company", and it is said that his work "places him in the first rank of the geographers of the present century". He worked for the East India Company and the India Office for 48 years. (Pakistan Final Memorial, Annex Q, para. 21, p. 86.)

A somewhat similar map is relied upon by Pakistan because it emanated from a person famous in those days and those places. It was the then Lieutenant Alexander Burnes, at one time British Resident in Kutch. He is said to have been the first to conduct an actual survey of the area. "His survey", said the Leading Counsel for Pakistan, "when we are dealing with surveys generally, though there are errors of position, etc. in it, was regarded as an achievement at the time when he did it." Pakistan also says that "Burnes actually surveyed the Rann, only his instruments were not correct; it was as good a survey as he could make with his limited means and in the difficult terrain which the Rann is, it is not a very accurate survey but it is a survey." (Pak. Map 7, dated 1831.)

India denies to Burnes' survey any scientific character. In fact there was no survey, the surveyors relying upon very imperfect and totally inadequate materials, as Holland, Acting Quarter Master General, himself said.

ad c) Seven maps, while showing the Rann as outside Sind, show a portion of it, in its western part, as belonging to Sind. Among them are two maps of Walker.

There was no particular debate in connection with these maps (Pak. Maps 3, 5, 6, 7, 8, 9 and 10).

ad d) Six maps show the Rann as a body of water; this was used by Pakistan to advance its thesis of the Rann as a "marine feature".

India did not discuss this issue in connection with maps (Pak. Maps 23, 25, 26, 29, 30 and 31). One of them, dated 1867–69, could be considered a pre-survey map.

The maps mentioned above under *a*), *b*), *c*) and *d*) gave Pakistan the occasion for the following statement:

> "It is the case of Pakistan that, geographically, the Rann is a marine feature separating coastal states. As such, its cartographical depiction must distinguish between land and the Rann. It is India's case that the Rann is not a marine feature. It is for India, therefore, to show, consistently with its case, why the Rann is not included in the territory of Kutch, and not for Pakistan to show why it is not included in the land of Sind. If a cartographer sets out to depict the alignment of the boundary in a marine feature, he might do so as was done by the makers of Pak. Maps 1 and 4. On the other hand, if a cartographer contents himself with land boundaries only, marine features separating coastal territories are bound to be depicted as they have been depicted in the maps produced by Pakistan." (Pakistan Final Memorial, para. 73, p. 17, quoted in Verbatim Records, p. 5217.)

India comes back to the question of the value of the pre-survey maps while introducing the maps she relies upon, i.e., the maps produced and based on scientific surveys.

On this occasion India stresses (Verbatim Records, pp. 13471–91), that high administrative authorities considered all pre-survey maps as inadequate when the question of an official survey was debated. Official correspondence is produced

where maps by John Walker and two maps endorsed by the Quarter Master General's department in Bombay (Pak. Maps 5 and 8) were specifically mentioned.

On this point a document is submitted and quoted. (From Bombay Political Proceedings, Vol. IV, 1844, Ind. Doc. TA-9.) It is a letter written to the Government of Bombay by Major J. Holland, Acting Quarter Master General of the Army, on 17 August 1844, in which it was said, *i.a.*:

> "The Commander in Chief desires me to take this opportunity. . .in order to prevent misconception, as well as in justice to this department, to explain that the map referred to from this Office was compiled from such materials as then existed, which, in the portion referred to, consisted of little more than the march routes of the Army of the Indus in 1839 and 1840, and that it was therefore necessarily most imperfect and incorrect, and that even now that much more material exists, and has been made use of there is no doubt, but that many and grave errors exist as must be the case in every map which is not compiled on an accurate astronomical and trigonometrical basis, with the inferior triangles filled in from actual Survey. . .".
>
> "If therefore this department were to wait until an accurate map could be furnished, The Commander in Chief needs hardly add that it would probably be many years before it could produce one at all, but His Excellency considers it to be the duty of the Quarter Master General's department to furnish from time to time the most accurate maps that the materials will admit of: such was the map of which Captain Baker complains, and such only as the present, while it is hoped that others more complete and more accurate may yet from time be compiled in this office, as materials increase and former errors are rectified."

The reference to the complaint by Captain Baker is explained in a marginal note on the document which reads: "Stating that certain portions of the map of Scinde by Walker and of one dated in 1841 by the Quarter Master General's department at Bombay are most incorrectly laid down."

India stresses in this connection that the author of this letter was himself the author of one of the maps mentioned as incorrect (Pak. Map 11).

India stresses further that the criticism contained in this letter, although it is dated 1844, concerns also later maps because and insofar as they repeat the same errors as the maps previous to the letter. It is to be noted also that India states that she does not place "reliance on these maps at all, although parts of the maps do support us because. . .it is perhaps safer to go by the scientifically tested and authoritatively approved maps".

What India has here in mind is evidently the fact that the northern edge of the Rann, including the edge around the Nagar Parkar peninsula, appears on many pre-survey maps as the southern boundary of Sind.

On the whole India describes the pre-survey maps as unscientific, as there was no scientific survey of the territory. Individuals who penetrated into Sind made maps. They went on travels and made maps of the kind annexed to their descriptions of travels into various hinterland where they explored. They were pioneers. By local inquiry, partly by guess work and partly by taking measurements by pacing, they made maps annexed to their memoirs. India considers these old maps imperfect and incorrect and prepared on imperfect material; it points out serious discrepancies and grave errors in the maps relied upon by Pakistan. In short, in its view one cannot construct a coherent picture of the Sind boundary by reference to these crude maps. As regards post-survey maps which are

unaffected by the surveys, India explains that for reasons of economy old plates were used.

India points out that when the scientific survey of Sind was undertaken between 1855 and 1870, it was stated more than once that there were no good maps of Sind. The Commissioner in Sind observed: "The want of good maps is a serious public inconvenience, the extent of which it is felt in every department, and can hardly be exaggerated"; the Government of India, writing to the Government of Bombay, observed: "It [the Survey] will, at all events, have large topographical value for Military, Political and general purposes"; the Secretary of State said in his Despatch: ". . .the want of good maps of the Province having long been felt as a serious inconvenience". In the face of these statements at such high levels, the "pre-survey" maps cannot be regarded as authentic.

5A. *The Survey of Sind in 1855–70 (Macdonald)*

In the years 1855–70 a survey of the Province of Sind was carried out by professional surveyors of the Survey of India under the orders of the Government of India on the request of the Commissioner in Sind.

Among the surveyors working on this survey, the role of Captain Donald Macdonald, Deputy Superintendent of Survey, was outstanding. He was in charge of the surveying and mapping during the last four years (1866–70). It was in this period that the area the present case is concerned with was surveyed. For these reasons the survey of Sind 1855–70 became popularly known as Macdonald's Survey and was so called also in the proceedings of the present case.

The Indian Memorial stated the position of India with respect to this survey in the following terms (paras. 124 and 125):

> "Some time after the conquest of Sind, a Revenue Survey of Sind was undertaken by the Survey of India. The survey was commenced during 1855–56 and completed during 1869–70. As a result of this survey, the Map of Sind was prepared in several sheets and published by the Survey of India under the direction of the Surveyor-General of India. At that time Sind was divided into the three Collectorates of Karachi, Hyderabad and Sikarpoor and the two Political Superintendencies of the Upper Sind Frontier, and the Thar and Parkar Districts. . . Sheets Nos. 91 to 97 (B-2) represent the southern portion of Sind, namely the southern portions of the Karachi Collectorate, the Hyderabad Collectorate and the Thar and Parkar Political Superintendency. The provincial boundary is indicated in these sheets by the symbol ------; the limits of the Karachi Collectorate are shown in green riband, those of the Hyderabad Collectorate in yellow riband and those of the Thar and Parkar Political Superintendency in purple riband. These sheets show that the southern boundary of Sind runs roughly along the northern edge of the Rann. . .In 1877, the Map of Sind was prepared in one sheet on the basis of the aforesaid survey. This Map (B-3) shows that no part of the Rann claimed by Pakistan was included in Sind."

All the above-mentioned sheets with the common label B-2 and the sheet with the label B-3 were to be found annexed to the Indian Memorial as coloured photostat copies.

The Pakistan Counter-Memorial includes the B-2 group of maps and the B-3 map in the category of maps produced by India that are inaccurate, unreliable and erroneous as a consequence of a cartographical confusion (paras. 154–157, 158 and 220).

As to the origin of the boundary line depicted in the Indian Map B-2 Series, the same Counter-Memorial advanced the thesis that the surveyors observed (and depicted) "a shore in the north, which was well-defined up to a certain distance in the west; a shore in the east which was well-defined; and a shore in the south which was well-defined. In the west, there was nothing to mark any abrupt change between that which was the Rann and that which was not the Rann. Any boundary in that region in the west, therefore, had perforce to be an arbitrary notional line, and not a natural feature constituting a physical boundary." (para. 158.)

As to the value of the boundary line depicted in the Indian Map B-2 Series, the same Counter-Memorial (Annex J) advanced the thesis that it could not have been the result of the survey work in the field as a province-boundary. Three arguments are brought forward to corroborate this thesis:

(*a*) Sheets on a 4 inches to a mile scale of which the Indian Map B-2 Series, on a 1 inch to a mile scale, is a reduction, show no boundaries at all; this is demonstrated by Pakistan Maps 57, 58, 59, 60, 61, 62, 63, 64 and 65; all these maps are signed by Macdonald while the Indian Map B-2 Series are not signed;

(*b*) The line appearing in some of these sheets, such as Pakistan Maps 57 and 58, is a line dividing a settled deh from what is described in those maps as the "Rann Sub-Circuit". This uninhabited tract of land was surveyed, as is shown also in Pakistan Maps 63, 64 and 65, which depict "no part of any settled deh"; "the headings of those maps clearly indicate that the area falling therein was a part of Mahomed Khan's Tanda district" (Hyderabad Collectorate of Sind); the mentioned line which is interpreted as excluding the Rann Sub-Circuit from Sind cannot, therefore, be the boundary of that province;

(*c*) A sheet designed by Captain Macdonald with the No. 79 of Sind Revenue Survey of the Thar Parkar District, a photostat copy of which was submitted as Pakistan Map 70, has a symbol for the boundary of a province along the boundary between Sind and Jodhpur while "the line dividing the mainland of Sind from the tract lying to its south (the Rann) is not marked with any symbol".

The Pakistan Counter-Memorial concluded by saying that "since it has been demonstrated that on the original sheets no boundary between the mainland of Sind and the Rann of Kutch or between the dry lands of Sind and the lands of the lower delta was depicted, it follows that any depiction of a boundary along the mainland of Sind or cutting across the lands of the lower delta is unauthorised and of no consequence". (p. 117.)

Concerning Indian Map B-3 it was pointed out, in continuation of the above, that it contradicted the Indian argument in reliance on it by several of its features and, primarily, by the following two:

(*a*) While the "external and undisputed boundary of the Province of Sind in the east is clearly marked with a dash and dot symbol of a Provincial boundary" the line dividing the Sind mainland from the Rann of Kutch had no such symbol but an unbroken black line from what was called later in this case the eastern terminus to the vicinity of Rahim ki Bazar and from there on a dot-dot symbol which stands, in the same map, for internal boundaries;

(*b*) The area coloured green did not stop at the dot-dot line but went beyond

"indicating that some of the area lying outside the settled portion was also surveyed as a part of Sind" (i.e., the "Rann Sub-Circuit" of Mahomed Khan's Tanda).

Pakistan concludes that Indian Map B-3 does not show that no part of the Rann was included in Sind as asserted by India.

The Indian Final Memorial had two new points to make on the matter:

(1) The straight vertical line shown in the B-2 sheets as the boundary of Sind in the sector of the Shahbunder District of the Karachi Collectorate and called by the Pakistan Counter-Memorial "an arbitrary notional line" was reported on by Captain Macdonald in his Report dated 1 October 1870 relating to the survey work in the season 1869–70. He reports that "the eastern boundary of that District was determined with the help of Thakbust Maps and Moojmullees" (quoted from the annexed Ind. Doc. AA-8), i.e., it was based on material furnished by local authorities.

(2) The value of what the Pakistan Counter-Memorial called original maps was contradicted by the assertion that those maps (Pak. Maps 57 and 65) "represent an intermediate stage in the making of the final maps" and hence are incomplete and do not depict the final position. The complete maps prepared at a later stage, signed by Captain Macdonald, are produced in Indian Maps BBB-1 and BBB-9. These maps, which show the boundary of Sind, do not include in Sind the part of the Rann surveyed (*vide* also the relevant Alphabetical and Statistical Indices relating to these maps and Indices to the Sheets in Main Circuit Nos. 37 and 38 in Ind. Map BBB-10).

An Annex to the Indian Final Memorial contained photostat copies of the mentioned maps.

During the oral hearings Macdonald's Survey and its products were repeatedly and thoroughly discussed.

In the opening statement of India (Verbatim Records, pp. 743–1018), it was pointed out that the confection of maps went through several stages which were reflected in maps of a different kind. In chronological order, these were the following:

(1) Mosaic maps (such a map was not shown);

(2) Preparatory maps on a 1/4 mile to 1 inch maps; the maps produced by Pakistan under No. 57–65 were such maps;

(3) Final versions of 1/4 mile to 1 inch maps; such were the Indian Map BBB Series;

(4) Official or standard maps on a 1 inch to 1 mile scale; such is the Indian Map B-2 Series;

(5) A consolidated map of the whole survey after its completion on the scale of 16 miles to an inch, with the boundary symbols; this is Indian Map B-3.

Differences between these categories of maps were stressed. It was said that maps of the second category (Pak. Maps 57 to 65) were not for publication and were not published. They were sheets prepared at a preliminary stage. Subsequently, and on the basis of such sheets, a work was performed that was called "fair drawing". It consisted, *i.a.*, in putting all details, including boundary

symbols, together from basic material. This work once completed, the map was dated, signed and published.

The Tribunal was invited to compare Pakistan Map 57 and Indian Map BBB-1 which covered the same area and were on the same scale, i.e., maps showing the second and third stages of map-making. It found effectively that both were signed by Macdonald, that the second had a few more details, that it had a boundary symbol which was lacking in the first and that the second was dated "22.8.67"; while the first had no date.

Concerning the Indian Map B-2 Series, it was stressed that it had an endorsement; the maps of previous stages had not. It was "published under the direction and the authority of the Surveyor General of India who was the common Surveyor General for both sides at that time". (Verbatim Records, p. 777.) That is why the maps of that series deserved to be called official maps. They are "authentic" and of "great weight". (Verbatim Records, p. 998.)

In the last category, there is but one map, Indian Map B-3. This map was defended against the two main points of criticism raised by Pakistan and it was argued that:

(1) The dash-dot boundary symbol does not appear along the northern edge of the Rann because there is a natural feature, the edge, and a road along it shown both with unbroken lines, and therefore the boundary symbol would be superfluous. This was the usual practice.

(2) The dash-dot boundary symbol does not appear everywhere on this map, even where there are no natural features; such is the case with the Khairpur boundary; it has only dots like the Sind–Kutch boundary to the west of Rahim ki Bazar and along the vertical line.

(3) The green wash which does not correspond to the surface of what India contends is the area of Mahomed Khan's Tanda does not show this administrative unit but merely the area surveyed on a particular scale, as is visible from the legend; green stands for tracts surveyed on a scale of 4 inches to 1 mile. "This is", said Counsel for India, "a consolidated map principally for the purpose of showing what were the scales of survey in each block."

A last point was greatly stressed. It related to the way in which the survey party of Macdonald came to draw the straight vertical line from a point close to the village of Kirria to the top of the Khori Creek. On this question, Macdonald's Annual Reports were quoted to corroborate the precautions for accuracy taken by his party. Original Reports for the season 1867–68, 1868–69 and 1869–70 were exhibited. The second of those three Reports dealt with the work in the sector of the vertical line, i.e., in the so-called Jati Taluka of Shahbunder District. In this Report one could read:

> "In Jatee the boundaries were all marked with stone, and agreed with the Thakbust Maps, which had been sketched in with plane tables and chaining. There were no disputed boundaries."

The next Report, the Report for the last season, 1869–70, was quoted where it reads:

> "The Survey of Sind is now finished. I have received instruction to move up with my Division to take up the Survey of the Delhi and Hissar Divisions of the Punjaub."

The Indian interpretation of the significance of its maps of the Indian Map BB-1 to BBB-10 Series and of the corresponding Pakistan Maps 57 to 65 was criticised by Leading Counsel for Pakistan in his answer.

The essential points of his criticism, and the essential points of the position of Pakistan of the same issue, were the following:

The Survey of Sind in 1855–70 was a survey with a limited purpose and therefore conducted in a way suiting this purpose. It was a Revenue Survey of a peculiar character. This point was sought to be substantiated by reference to documents compiled in the publication: *Selection from the Bombay Government Records,* Vol. XVIII, New Series, Further Correspondence. From this book a letter written from the Government of Bombay to the Government of India, dated 3 November 1856, and concerning the Sind survey, was quoted where it reads:

> "The Government of India are aware that it never was proposed by this Government to subject Sind to a regular Revenue Survey carried out with the minute detail which marks the operations of the Bombay Revenue Survey. What was contemplated was a rough Survey for revenue purposes, in which the area and larger sub-divisions of each village should be recorded with sufficient accuracy to guide the Revenue Officers in their future management of the country." (Verbatim Records, p. 5852.)

At the same time, Pakistan quoted the following passage from this book:

> "In addition to a rough Revenue Survey, such as is above indicated, the want of a Topographical Survey had also been felt. . .When, therefore, a Survey Party was deputed from the Punjaub, and the means thus placed at our disposal of effecting a Survey giving at once both the scientific topographical results which were required, and a Revenue Survey. . ." (Verbatim Records, pp. 5853–4/5.)

Such a limited purpose was to be and was carried out in the Province of Sind, which, compared with other provinces in India, presented particular difficulties for surveyors. It had for generations (since Nadir Shah's time) not "a single ten years of what could, even in India, be called a settled government". It had, besides, little fertile land and land cultivation depended on irrigation by way of canals which, "if not carefully looked after, will flood a district one year, and leave it dry and barren the next". Consequences: fluctuation of the population, many deserted villages, dehs or even districts, and no attempt – in the past – to mark village boundaries. This information was taken and quoted from a letter written on 12 January 1855 by the then Commissioner in Sind, Bartle Frere, to Lord Elphinstone, the then Governor of Bombay. (*ibid.*, Verbatim Records, pp. 5665–78 and 81.)

One of the consequences of the above two circumstances was that in border areas between Sind and Kutch uncultivated land – irrelevant for revenue purposes – and whole deserted villages, dehs or even districts, where there was no one to indicate the surface of the once settled village, deh or district, could be and most probably were, left unsurveyed and unmarked.

With respect to maps of the debated series it was stressed that the surveyor's function was to produce three kinds of maps: the village or deh maps, large-scale maps of 4 inches to one mile; the purgana (group of villages) maps on one fourth of that scale, one inch to one mile, and an index map on a scale of 4 miles to an inch, which is one sixteenth of the scale of the village map. (Verbatim Records, p. 5751.) The initial work for the production of these maps was done by people

called "settlement officers"; they made local enquiries, then asked the villagers to make boundary marks, thaks (usually mud pillars); as soon as villagers had put all the thaks round their village they "thakbusted" it; the settlement officers then "thakbusted" that village on paper and produced a "thakbust map" (Verbatim Records, p. 5859); on the basis of such thakbust maps the surveyors did the actual surveying and produced the village (or deh) map on a 4 inches to one mile scale (Verbatim Records, p. 5751); with this work completed, the essential task of the surveyors was exhausted; the rest would be mechanical transformation of the village map which must be considered as their "finished product". (Verbatim Records, pp. 5742–5.) The village map was copied and the copy delivered to the local authorities. This map was the so-called Collector's copy and was, in fact, the end product; it was the product delivered to the indentor, to Sind, who had paid for the whole work.

The Indian Map BBB Series are village maps and Pakistan Maps 57 to 65 are copies of such maps made for local authorities and delivered to them.

This is why the Pakistan Maps 57 to 65 have less details and are not dated. They have less details because, when the village maps were copied by hand, superfluous details were left out. They have no date for a simple reason. The note with the date reads, f.i., on Indian Map BBB-2: "I.D.s examined by... 28/8/67" and "Pd. by T.D. 26/4/67". This means: "Interior details examined by (so and so) the 28th of August 1867" and "Plotted by T.D. on the 26th of April 1867". This information was irrelevant for authorities and was, therefore, left out of the copy made for them. (Verbatim Records, p. 6152.)

Concerning boundary symbols it is to be noticed that both village maps (Ind. Maps BBB-1 to BBB-10) and copies of such maps (Pak. Maps 57 to 65) have boundary symbols but of a different style. Village maps have a dash-dot line, copies have an unbroken line at the same place. But whatever the reason for the difference in style, the line cannot mean anything but a village boundary. It is everywhere, in these maps, drawn all around a given village, whether the neighbouring territory is surveyed or unsurveyed Rann or whether it is another surveyed village. Between villages of Sind there can be only a village boundary (Verbatim Records, pp. 6045–6) and in no case, whatever the symbol, the boundary of Sind (Verbatim Records, pp. 6032 and 6037).

These village boundaries are, besides, unreliable for several reasons:

(*a*) Whether a tract of land was or was not included in a village, could, in some cases depend on fortuitous circumstances: waste land on the periphery of a village would be shown as part of a village if a Zaminder (landlord) was interested in it and was ready to pay taxes for it; if no one was interested, such waste land would not be shown as village territory;

(*b*) There were, in the area, a number of deserted villages, which was a common occurrence in Sind; symbols for deserted villages appear on both types of maps, particularly along the dry bed of the Rain River (Pak. Map 57 and Ind. Map BBB-1); the symbol is a cross; these crosses are outside the village boundary, to the south of it (Verbatim Records, pp. 5882–5);

(*c*) Some of the maps, of both types, show the Sind District called Mahomed Khan's Tanda with territory only of this district, without any reference to Kutch

or even to the Rann of Kutch. Yet not all territory is included in villages; some is beyond the southern-most village boundary without being included in any village. This is the Rann Sub-Circuit. See f.i., Indian Maps BBB-4, BBB-5 and BBB-7 (Verbatim Records, pp. 6172–77 and 6197–6202);

(*d*) There is great uncertainty about the use of boundary symbols, and indeed, of many other symbols appearing on these maps.

With this last point made by Pakistan a controversy was started that took a considerable effort of clarification. The main point made by Pakistan at this stage was the following. It appears from the circumstances and available literature, such as, in the first place, the *Manuals of Surveying* by Thuillier, First Edition 1855, Second Edition 1875, and from documents including in particular Captain Macdonald's Reports on the survey work, that it is not clear at all what symbols were used in drawing these maps and with what significance. There are four different symbol tables. The two editions of the above-mentioned *Manuals* have two different tables and Pakistan has found two more. One of them was signed by the Surveyor-General of India and was dated 1865, the other was not signed and not dated, but in all probability contemporary with the events here considered and in use at that time.

The methods of surveying and all the other above-mentioned circumstances were the justification for the thesis of Pakistan that there was a considerable amount of confusion in the survey work at various levels.

"First", said Leading Counsel for Pakistan:

> "...there is a topographical confusion because of natural and artificial changes, such as dams being built, earthquakes, lakes being formed, Allah bunds emerging; then there is a confusion because populations are emigrating, villages are being deserted; you do not know what are the boundaries of villages; people are trying to recall what the ancient boundaries are; boundaries may or may not be correctly depicted; some places where people have emigrated from, their boundaries might get left out altogether...then there is...some confusion that has been created by which symbol table is to be used and some kind of symbol has appeared..." (Verbatim Records, p. 6047.)

So much for village maps of the two kinds. With respect to the Indian Map B-2 Series on the one inch to one mile scale (sometimes called purgana; general or standard maps), edited by the Surveyor-General, Pakistan had, at this stage, to say the following (Verbatim Records, pp. 6142–6617):

Between the village maps and the Indian Map B-2 Series there is an intermediate stage for which evidence is not provided by India. It is, for some of the Indian Map B-2 Series, provided by Pakistan. The relevant maps are, respectively, for the Macdonald Sheet 93 – Pakistan Map 66, for Sheet 94 – Pakistan Map 67, for Sheet 95 – Pakistan Map 68. Besides, Pakistan submitted, with her Maps 70 and 71, the intermediate maps for the Macdonald Sheets 79 and 80, lacking in the Indian Map B-2 Series. (Verbatim Records, p. 6251.)

The Pakistan Maps 66, 67, 68, 70 and 71 are evidently intermediate stages. The evidence is:

(*a*) Three of them are signed by Macdonald like the village maps and unlike the Indian Map B-2 Series, these are Pakistan Maps 66, 68 and 70. The two remaining ones, 67 and 71, are unsigned but it is indicated in the margin that

they are reprints of sheets from Macdonald's Survey; they are in all other respects identical to Pakistan Maps 66, 68 and 70;

(*b*) They are less elaborate but some details have been added, such as the indication that the water of ponds along the edge of the Rann (dhands) is salty, etc.; the spelling of some words has been corrected (Verbatim Records, p. 6561);

(*c*) What is essential – they have no boundary symbols along the edge of the Rann, while the Indian Map B-2 Series have a dash-dash symbol plus a coloured riband.

Pakistan Map 70, corresponding to the lacking Sheet 79 of the Indian Map B-2 Series, has, like the other similar maps, no boundary symbol along the edge of the Rann but it does have a boundary symbol towards the east, for the Sind–Jodhpur boundary.

There are no traces, in the evidence submitted by India, of the proceedings that led to the transformation of what are Pakistan Maps 66 to 71 into what are the Indian Map B-2 Series. Who put those boundary symbols (– – –) and those coloured ribands into the sheets produced by Macdonald and signed by him to transform them into what are the Indian Map B-2 Series? With whose authority? By what right? For what reason? There are no answers to these questions.

One thing is clear, though. Macdonald has shown no boundaries. "Somebody else has put in those boundaries and has gone wrong over it". (Verbatim Records, p. 6557.)

It is not certain what the dash-dash and the coloured riband along the Rann actually mean. All around a district of Sind they do mean a district boundary. Therefore along common boundaries of two adjacent districts there appears a double coloured riband. As the District of Shahbunder has a green riband while Mohamed Khan's Tanda has a brownish one, their common border has a double green-brown riband. But along the area shown as the Rann of Kutch there appears only one of the two colours. The same is true as regards the District of Omerkot (Thar Parkar) which has a bluish riband along the edge of the Rann.

The unsigned Indian Map B-2 Series, edited, it is true, under the authority of the Surveyor-General, does not show the Sind–Kutch border, anyhow. This point is proved by three observations:

(*a*) The State of Kutch is nowhere mentioned, either in the body of the maps or on the margins;

(*b*) The exception, which confirms the rule, is Sheet 97 which shows the Khori Creek-Lakhpat sector, where the word "Cutch" appears on the southern margin with the small letters "CUTC" and continues, in the body of the map, with the lacking "H" printed in a large letter, corresponding to the inscription from "Rann of Cutch" over the Rann. The word "Cutch" covers exactly the mainland of Kutch and is restricted to it;

(*c*) On Sheet 92 of the Indian Map B-2 Series the boundary symbol and the coloured riband cut a well known Sind town or large village, Rahim ki Bazar, away from its hinterland. If the boundary symbol and the coloured riband meant what India suggests they mean, then Rahim ki Bazar would belong to Kutch, which no one has ever asserted. (Verbatim Records, p. 6748.)

The conclusion on this point was: ". . .these things that are shown are not boundaries between Sind and Kutch, whatever else they may be. . .while it is not possible to interpret the symbol positively, it is possible to give a positive answer as to what it is not, and it is certainly not the boundary between Sind and Kutch".

India's reaction to the above propositions of Pakistan came during her reply with the presentation of the relevant chapter in a new compilation on surveys and maps. It was Chapter III and it contained 52 items which meant so many new documents (in photostat) or new quotations from different publications or documents.

The Indian reply concentrated on a few issues considered to be decisive.

The inadequacy of all pre-survey maps having been generally recognised and the urgent necessity of a scientific survey having been accepted by all relevant authorities, the question was: what kind of survey was contemplated and was carried out in Sind?

On this point the Pakistan thesis that only a rough survey for revenue purposes was ever contemplated and carried out was opposed by India with the thesis that a revenue survey is not a rough survey and that the survey of Sind, although called a revenue survey, was a very detailed survey. It might have been, in some respects, slightly less detailed than surveys of more densely populated areas and have followed a pattern of its own, but it did record everything of importance not only for revenue but for general purposes of administration and defence.

The name given to the survey, a "revenue" survey, is to a certain extent misleading. The Commissioner in Sind at the time, who in November 1856 wrote that the survey under way in Sind was less detailed than the one previously carried out in Bombay, wrote a year earlier, in April 1855 to the same Lord Elphinstone, Governor of Bombay in a letter:

> ". . .the duties of a Revenue Survey establishment are confined to surveying and mapping and collecting statistical data, and have nothing to do with assessing the land-tax, the most essential difference between the operations of a revenue, as distinguished from a topographical survey being that it records all facts and features which have a purely fiscal importance, as well as those which are of topographical value; whereas a topographical survey takes notice only of such facts as have a strictly topographical importance". (Compilation, p. 142.)

In some documents, the survey going on is called a topographical revenue survey. This is so in a letter written by the next Commissioner in Sind, . . .to the same Bartle Frere, who has, meanwhile become Governor of Bombay. This letter, dated 24 September 1862, at a time when the survey was in full swing, gives an account of the survey work by stating, *i.a.* (Compilation, p. 143 and ff.):

> "In the Province of Sind there are two Surveys being carried on side by side, perfectly different in their method and procedure, and in their objects. First, there is what is called, though scarcely correctly, the Revenue Survey, which in reality is nothing but a Topographical Survey; and second, there is the Survey under the different Settlement Officers which almost exactly corresponds with the Revenue Survey of other parts of the Bombay Presidency. . ."
>
> "The first intention of the Commissioner in Sind in 1855, the year in which operations were commenced, apparently was, that the Survey by the Settlement Officers should

be of a very rough description. It seems to have been his intention that these officers should ascertain and mark village boundaries to prepare the way for the Scientific Topographical Survey, and this preliminary operation was to be followed by a preliminary Revenue Settlement, to take place of the imperfect expedients for levying the Land Revenue then existing. These preliminary Settlements were to remain in force 'till such time as a perfect Topographical Survey and a good Revenue Survey founded on it had been made'.

"Although this was the alleged object, the instructions issued to the Settlement Officers seem to have necessitated a much more elaborate inquiry. These Officers were expected to settle the number of 'dehs' or villages to be continued in each district; if any were found too large, any ancient or well-known subdivisions were to be ascertained, and, if found convenient, adopted; if none such could be discovered, a partition was to be made *de novo*. If 'from peculiar circumstances it was found desirable to unite two or more very small 'dehs',' this was to be done.

"In the hill and desert tracts, where there never were any divisions, or where it was impossible to trace them, fresh divisions were to be made after carefully examining the natural features of the country.

"When the Settlement Officers had got a correct list of territorial divisions, they were next to have the boundaries of such, marked and recorded in a permanent manner. As a general rule the villagers were to fix their own boundaries, and the expense, whether of labour or money, was to be fairly divided between the conterminous villages, except where it would fall heavily on the villagers, when a portion was to be borne by Government.

"When the village boundaries had been fixed, and boundary marks erected the Settlement Officers were to ascertain from the Jadheer records and reports of district Officers, the names of all Zemindars, Jagheerdars, &c., in every village, who were then to be called on, to erect within a specified time, boundary marks along the boundaries of their Jagheers or Zemindarees; and if, on inspection, these were found by the Settlement Officer to be incorrectly or insufficiently marked, he was to have these defects remedied, – the cost of the necessary operations being recovered as a Revenue demand from the defaulting Jagheerdar or Zemindar.

"Field boundary marks were to be erected where the Settlement Officers thought such a proceeding necessary, and the cost was to be borne wholly or in part by the Government.

"When these operations had been completed, the settlement officers were to cause a record of boundaries of Jagheers, Zemindarees, and their subdivisions, to be prepared."

As for the work of the professional surveyors on the basis of this preparatory work of Settlement Officers, it is said in the same letter that "in the maps now being prepared by the Professional Survey, great detail is given: cultivated land, land lately cultivated, etc., is separately shown".

Such a detailed result could be obtained since the topographical surveyors were liable to and do provide the following details:

"Extent of Cultivation including fallow.

"Extent lately thrown out of Cultivation.

"Extent fit for Cultivation.

"Extent occupied by Jungle Lands, Roads and Paths, Jheels (tanks), and Nullahs (canals), and extent of Barren Waste; also the number of 'Pucka' (brick) and 'Kutcha' (mud) Houses and Wells, Depth of Water, the General Religion of the inhabitants and tribes, the number of Ploughs in the Village, the kind of Soil, Extent of Irrigated land, etc."

Great emphasis was put on data in the above quoted, as in many other

quoted documents to the effect that uncultivated, barren waste was surveyed without exception, be it in the interior, be it on the periphery of the province.

In this respect priority was given to annual reports of the surveyors themselves who regularly reported what they surveyed and mentioned *expressis verbis* that they surveyed also barren waste, deserted sites, sandy deserts, high rugged rocky ranges, great planes of soft mud (f.i., in the Indus Delta).

The Report which best enumerated these categories of surveyed surfaces (Report for 1863–64, p. 162 of Compilation) states, *i.a.*, that "throughout the 8 years none of our work has been useful for Revenue purposes".

In the Report for year 1868–69 the work done on the northern edge of the Rann of Kutch is noted and it is said that "the desert Talooquas of Deepla, Mittee and Nuggur" were surveyed on the "Topographical or one-inch scale". On this occasion, too "the interior detail work was executed with plane tables and chaining" (i.e., measuring and plotting). "The usual details have been entered on the 4 inch maps, viz., cultivation, fit for cultivation, waste, bush, grass, etc. etc." (Compilation, p. 158.)

In the same Report it is mentioned that the next season's work will include another tract adjacent to the Rann in its western part, i.e., a part of Jati Taluka of Shahbunder District, and it is said that this part of the taluka "is all 'put' or a flat, salt barren plain with hardly a vestige of cultivation and without permanent residents."

And, indeed, this tract of land was surveyed next season and it was surveyed on the topographical one inch to one mile scale. The corresponding Report for 1869–70 (Compilation, p. 158) states that what was surveyed was a barren salt waste, with several uninhabited dehs where, in some portions, "the only features to be mapped were salt creeks".

"This shows", concluded Counsel for India, "how large tracts of land, totally uninhabited, barren waste, were still surveyed although they were on the periphery".

The next group of quotations and new documents (pp. 159–173) of the Compilation were used in support of the assertion that the whole of Sind was surveyed and that no part of it was left out of the survey. India relies upon the correspondence between the Commissioner in Sind, the Surveyor-General of India, the Government of Bombay, the Government of India and the Secretary of State, all of which refer to the survey as the survey of the whole Province of Sind, undertaken for the purpose of preparing a map of Sind; in his letter to the Governor of Bombay, the Commissioner in Sind observed: "The want of good maps is a serious public inconvenience, the extent of which is felt in every Department, and can hardly be exaggerated"; the Government of India, writing to the Government of Bombay, observed: "It will, at all events, have large topographical value for Military, Political and general purposes"; the Annual Reports of the Survey of India refer to the survey as a survey of the Province of Sind; and in Macdonald's Report for the last survey season, 1869–70, he stated: "The Survey of Sind is now finished. I have received instructions to move up with my Division to take up the Survey of the Delhi and Hissar Divisions of the Punjaub." In one sector, even more than Sind was surveyed. The survey covered,

indeed, the Indian State of Khairpur, which was geographically a part of the Sind area. In later years, when the survey work of the nineteenth century was recollected, it was reported that "the whole of Sind was originally surveyed between 1855 and 1870 by a Revenue Survey party. . ." (See the Report of the Indian Survey Committee 1904–05 in the Compilation, p. 169.)

As to the point raised by Pakistan that a tract of land, several miles large, had been surveyed in the Rann of Kutch, south of the second loop, yet left outside the border symbol on the Indian Map B-2 Series, and called by surveyors the Rann Sub-Circuit, reference was made to a *Handbook of Topography,* published in 1911 by order of the then Surveyor-General of India, E. A. Tandy, and in which one could find instructions about how to survey a completely flat tract of land where the normal triangulation technique proves impossible or very difficult. The technique employed in such cases is called traversing and in this technique artificial "circuits", divided, if necessary, into "sub-circuits", are drawn so as to achieve maximum accuracy. In 1850, a circular was issued to all the Revenue Surveyors that "For the more perfect connection of Maps to all adjoining Districts when surveyed by different Parties, the positions of a few villages and all conspicuous objects and geographical items *exterior* of the Purgunnah and District Boundary, within a reasonable distance from it are to be laid down." In the *Handbook of the Topographical Survey Department* written by Captain R. V. Riddel, published in 1878, it is said that surveying should not stop at an administrative boundary but should include "all villages, temples, or permanent objects adjoining or outside of the boundary of a topographical survey to be fixed so as to secure a good junction with the neighbouring Map" and that "when the boundary of a survey is a river, both banks must be surveyed". (Compilation, pp. 178–9.)

It was noted, besides, that on Sheets 77 and 78 of the same survey, covering another part of the Sind, the surveyed area overlapped into Rajasthan (Compilation, p. 180). As as in the sheets of the Indian Map B-2 Series, the adjoining State, whose territory the survey overlaps for greater accuracy, is not mentioned. There Rajasthan is not mentioned, here Kutch is not mentioned. They are all products of the Sind Revenue Survey and this is their title.

In brief, the portion of the Rann called the Rann Sub-Circuit was surveyed for accuracy in a particularly flat area and the surveying had nothing to do with the boundary. All maps that show a boundary in this area exclude this sub-circuit from Sind.

Lastly, the question of the significance of Macdonald's signature, on some maps and its absence on others and the relationship of this to the presence or absence of boundary symbols and colour ribands was tackled.

On this point the Annual Report of the Surveyors for the year 1866–67 was quoted. It was stressed that in that year the Badin Taluka of Mahomed Khan's Tanda District was surveyed and that this means the border area of the so-called second loop (see Ind. Map B-2, Sheet 91). In this report one can read, *i.a.*:

> "The following is a list of maps and records of the season: For the Dy. Surveyor General's Office. . . For the Collector of Hyderabad:
>
> 5 General Maps Scale 1 inch = 1 mile

3 Vals. Congregated Village maps with Index maps and Statistical registers, scale 4 inches = 1 mile."

On this occasion, Counsel for India submitted to the Tribunal an original Volume entitled *Congregated Village Maps.* In the Volume the original of the photostat Indian Map BBB-1 was found and inspected. It was effectively signed by Macdonald, had the dash-dot boundary symbol and was in all other respects identical to Indian Map BBB-1. The file itself was signed by Macdonald on the front page.

Counsel for India stressed then that this was the proof that the Collector got both the Congregated Village Maps on a 4 inch to one mile scale, corresponding to the Indian Mapp BBB Series and the Pakistan Maps 57 to 65, signed by Macdonald, and the general maps on a one inch to one mile scale corresponding to the Indian Map B-2 Series. Both had the boundary symbol. And this meant that the boundary was drawn by the surveyors, by Macdonald, and was not put into the maps, produced by Macdonald, by someone else at a later stage. No mention of Pakistan Maps 57 to 65 was made in any report of Macdonald. The Volumes of Congregated Village Maps were sent to the civil authorities as the Annual Reports show. India had also exhibited two maps, Indian Maps TB-18 and TB-18A, signed by Macdonald which also show the political boundaries. These maps established that the boundaries were not laid down in the Indian Map B-2 Series by unauthorised persons.

This fact could not be denied because there existed and circulated also village maps without boundary symbols, for whatever practical purpose they might have been produced.

India continued: Macdonald's Report for 1866–67 shows that stone marks were being substituted for the mud pillars so as to render the boundaries permanent. When Macdonald reached the southern part there were already existing mud pillars demarcating the boundary so far as the two loops in the Badin Taluka of Mahomed Khan's Tanda District are concerned; thus there was a physical demarcation on the ground so far as the two loops and the vertical line are concerned, i.e., the western boundary was demarcated by pillars at the time when the survey operations were going on. So far as the Thar Parkar boundary is concerned, there were no pillars but there was a natural feature which does duty for pillars so far as the demarcation on the ground is concerned. In this connection, India drew attention to rule 28 of the Rules for a Rough Survey and Settlement in Sind, framed by Frere, which said: "In many cases, no permanent boundary will be needed: the river, or a canal or a tank, hills of stone or sand, or roads, often form as good a boundary as could be desired." The Report for 1867–68 shows that Macdonald came across deh triple junctions permanently marked by stone pillars and he used them as theodolite stations. The Report for 1869–70 says:

"There was no difficulty in tracing boundaries which, when surveyed agreed well with the Thakbust Maps which had been drawn to scale on plane-tables. As all the boundary pillars were of stone, I utilised them as Theodolite Stations so that nearly every station in our traverse is permanently marked on the ground by a stone pillar."

Thus, the entire, or almost entire, conterminous boundary between Sind and

Kutch had been demarcated – the vertical line and the two loops with pillars and the Thar Parkar boundary by the edge of the Rann and the road.

India says that if any of the bets – Dhara Banni and Chhad Bet and places like that – had really belonged to Sind, they would have been included in the territory of Sind.

India submits the following six propositions regarding Macdonald's Survey:

(1) There were no accurate or reliable maps of Sind before Macdonald's Survey; the highest authorities said that they were handicapped for want of a good map.

(2) Macdonald's Survey was both topographical and revenue and, for the last four years, predominantly topographical. Being a topographical survey of the Province of Sind, the political boundary of Sind and of its main divisions, districts and talukas had to be drawn; a topographical map of Sind would not be complete unless these political boundaries were drawn. The "confusion" was only with reference to the inner divisions of Sind, like the village boundaries or the purgana boundaries but no confusion ever existed as regards the political boundary of Sind.

(3) The boundaries shown on the maps in the Indian Map B-2 and BBB Series were not drawn by some unauthorised person; they were drawn by Macdonald. The departmental instructions were that they had to be drawn by the man in charge.

(4) The boundaries of Sind were drawn, (*a*) after the most careful investigation, (*b*) as recognised and indicated by the Sind authorities themselves, (*c*) as accepted after publication by all authorities from the Secretary of State down to the Collectors in Sind to whom the maps with the boundaries were sent, and (*d*) as reproduced in subsequent maps of the highest authority with minor variations, and after 1914 subject to rectification.

(5) The whole of the Province of Sind was surveyed, without leaving out any territory comprised in that province.

(6) No part of the Rann now claimed by Pakistan is shown by the survey as part of Sind; the Rann Sub-Circuit is clearly shown as lying outside the boundaries of Sind.

India concludes: Apart from minor variations, the Macdonald line stood the test of time, and it went through two distinct checks later, out of both of which it emerges unscathed. The first check was that applied by Erskine in the west, Pullan in the central part and Osmaston in the east; they reaffirmed the Macdonald line, with some variations. The second check is in the form of Sind taluka maps, prepared by the Sind authorities. They again reaffirmed the boundaries shown by Macdonald. The taluka maps were not a mechanical repetition of the Government of India survey maps but the local authorities applied their minds to correcting the boundaries where necessary.

The entire historical evidence of a hundred years, the acceptance, the recognition, of the boundary of Sind and the conterminous boundary of Kutch, contradicts the suggestion of Pakistan that any portion of Sind was left out of the survey; it is a suggestion made for the first time in this adjudication.

6A. *The Survey of Kutch in 1879–86 (Pullan)*

In the years 1879–86 a survey of the State of Kutch was carried out under the Survey of India Department. The party of surveyors was headed by Major A. Pullan, Deputy Superintendent of the Survey of India. In consequence this survey became known as, and was called in the present case, Pullan's Survey.

The Indian Memorial referred to Pullan's Survey in its paragraph 179 (ii) in the following terms:

> "Between 1879–80 and 1885–86, the Cutch Party of the survey of India surveyed Kutch and a map of Cutch was prepared in several sheets. The Sheet, Nos. 3, 4, 10 and 11 of Cutch, prepared on the survey of season 1880–81 (B-47) and the Sheet, Nos. 17, 18, 24 and 25 of Cutch, prepared on the survey of seasons 1881–82 and 1883–84 show the Rann lying above 24° Parallel as belonging to Kutch. A reprint of the Sheet, Nos. 17, 18, 24 and 25 of Cutch (with additions and corrections from extra-departmental information up to 1929) is at B-48."

And the Indian Memorial concluded (para. 227) that "The Several maps discussed in Sub-Section (2) of Section 2 of Part VII" – which includes the above quoted paragraph 179 (ii) – "also indicate that the entire Rann of Kutch was within the Kutch territory".

The Pakistan Memorial stated in its paragraph 30, with reference to Pullan's Survey, that "no boundary between *Sind* and *Kutch* in the Rann was depicted on any of the survey maps prepared in consequence of this survey (Pakistan Maps 40, 41, 42, 43, 44, 46, 47, 48 and 49) and the existing position of exclusive control of Sind over the northern half of the Great Rann without a demarcated boundary continued as before".

And it was stressed that the absence of any boundary was precisely the intention of Pullan, who wrote on 15 July 1885 to the Government of Bombay, *i.a.*: "I have carefully abstained from laying down or even suggesting any boundary between Cutch and Sind."

According to the Indian Counter-Memorial it was in 1885, when the survey was almost completed, that Major Pullan "carefully abstained from laying down or even suggesting any boundary between Cutch and Sind" because the Sind authorities had raised a question about the boundary. At the beginning and until 1885, no doubts arose on this subject. "When Major Pullan commenced the survey of Kutch in 1879", it is stated in the Indian Counter-Memorial, "he as well as the Surveyor-General of India, were fully aware that the Rann of Kutch had to be surveyed as a part of the territory of Kutch. . ." The Annual Report for 1880–81, dated 1 October 1881, submitted by Major Pullan, also confirms that he was to and did survey the Rann of Kutch as a part of the territory of Kutch. He stated in his report:

> "The part of Cutch surveyed during the past field season comprised firstly a portion of the Great 'Rann' and the wide spreading grass known as 'Bani' together with the low, thickly wooded ground lying to the south and SE of the town of Lakhput (Sheets 3, 4, 10 and 11 of Cutch)."

Reference is made to the relevant Index Chart of the "Cutch Topographical Survey" (Ind. Map BB-2), which shows that all the sheets, except Sheet 5, relate to the area above the 24th parallel and this area is referred to by Pullan "as the part of Kutch". The map compiled by Pullan on the basis of the survey of season

1880–81 (Ind. Map B-47) also clearly indicates that he surveyed the Rann as a part of the territory of Kutch and he showed the northern edge of the Rann as the boundary between Sind and Kutch.

The Pakistan Counter-Memorial (para. 50) discussed Indian Map B-47 and advanced the thesis that the line which according to India is the boundary line between Sind and Kutch cannot be considered as such. It might be the limit to which the survey extended from the Kutch side. The legend printed at the foot of the map mentions no boundary symbols at all. The dash-dash symbol, along what is supposed to be the boundary line, is indicated in the legend as the symbol for a footpath. The double colour riband over this symbol has evidently been inserted later. A printed copy of the map from which Indian Map B-47 was reproduced, shown to a Pakistan party in India (in 1966, in connection with the present case), had the coloured riband put in by hand on an unsigned printed sheet without the coloured riband. The same area is covered by Pakistan Maps 40 and 80. They have no boundary symbols or ribands. For all these reasons, Indian Map B-47 is unreliable.

As to Indian Map B-48, it was said that it is a reprint of 1929 and is different from the original plane-table as found by Pakistan. The latter is signed by Pullan and its reproduction is submitted as Pakistan Map 69. It has no boundary symbols. So far as Indian Map B-48 differs from this original, it is "manifestly unreliable".

In this way two aspects of the issue of the significance of Pullan's Survey, and the validity of the maps it resulted in, appeared already in the Memorials and Counter-Memorials. One: why did Pullan not show a boundary between Sind and Kutch in his "finished product"; two: what do the lines mean that are shown on some of his earlier maps and which lie roughly where India puts the Sind–Kutch boundary?

The first aspect of the issue "acquired the character of a case", as Pakistan put it, when the question of the Sind–Kutch boundary came under particular consideration. Therefore, it is dealt with in this text together with similar cases under the heading "The 1885 Resolutions".

The second aspect of the issue was dealt with in discussion about the evaluation of certain maps, i.e., Indian Maps B-47, B-48, BB-2, TB-19 and TB-20, and Pakistan Maps 39, 40, 69, 80, 93, 113 and 114.

On this second aspect the positions of both parties were reiterated during the oral hearings and some new points were raised.

In its opening statement, India's argument was essentially the following (Verbatim Records, pp. 881–921, 966–72 and 1196–1201):

(*a*) Indian Map B-47 shows the Kutch–Sind boundary; the symbol dash-dash is indicated in the legend as a symbol for a footpath, but this was the symbol in use at that time to demarcate a boundary and it was used as a boundary symbol; it is drawn on the left part of the map in a straight line, while "it was never anyone's case that there was a footpath running all the way up in a straight line"; the symbol can show only the Sind–Kutch boundary and nothing else;

(*b*) Indian Map B-48 is a finished product; exactly half of the area covered by this map is shown by Pakistan Map 69; the latter is a "planetable section", that

is a sort of beginning, done on the spot; yet it already has the boundary symbol drawn in a solid unbroken line precisely where the finished product – Indian Map B-48 – has the dash-dot symbol;

(*c*) Both Indian Maps B-47 and B-48 are official publications expressly endorsed by the Survey of India, the first dated 1881 and the second 1886; the second is materially a reprint of 1929 but none the less official for that;

(*d*) Both Indian Maps B-47 and B-48, as well as the Pakistan Maps 40, 69 and 80, show only the northern portion of the Rann, above the 24th parallel, and yet are marked as showing Kutch (Pak. Maps 40 and 80 only Kutch, Pak. Map 69 "Parts of Sind and Cutch");

(*e*) The Index Chart, Indian Map BB-2, leaves no doubt that the area shown in the just-mentioned sheets was included in the Kutch Survey and considered as Kutch territory; this Index Chart too is official; it was edited by the Survey of India in 1881; in this Index Chart the boundary is shown all along the northern edge of the Rann;

(*f*) Pakistan Maps 42 to 44 and 46 to 49 are subsequent to the Bombay Government Resolution of 1885 and they do not show the boundaries but Indian Map B-47 and Pakistan Map 39, which are prior to that Resolution, show the boundaries. This means that Major Pullan drew the boundaries in these maps up to 1885 and stopped doing so only after that date;

(*g*) The maps published after Pullan's Survey by the Survey of India not only show the boundary as claimed by India, but some of them expressly mention Pullan's Survey as one of the surveys on which the maps were based; such is the quarter-inch Atlas Sheet under Indian Map B-6 of 1898 with the dash-dot boundary symbol along the Khori Creek and the so-called vertical line.

Pakistan's answer can be summarised in the following propositions (Verbatim Records, p. 6702):

(1) On Indian Map B-47:

(*a*) This map does definitely not show the boundary between Sind and Kutch. If compared with the two Index Charts, the one of 1881, which is Indian Map BB-2, and the one of 1884, which is Pakistan Map 93, it becomes most probable that the line with the dash-dash symbol is the line showing the southern limit of Macdonald's Survey, and for Pullan, the limit up to which he had to survey in order to cover the ground not surveyed by Macdonald and which he did survey – for this reason – during the field season of 1880–81;

(*b*) The map has at its bottom a small Index which was compared by Pakistan's experts, as to the line it shows, with all other maps showing a boundary line in this sector. It turned out to tally with no other map, particularly not with Pakistan Map 40, i.e., with the limit of the surveyed and marked area and the area in blank, and not even with the Indian Map B-47 line itself. It can, therefore, be considered "just as an imaginary kind of line which corresponds to nothing at all" (Verbatim Records, p. 6725). Later, Pakistan said "several maps have been published afterwards in which boundaries are shown, but if they mean any maps of Pullan that, I think is not correct, except for the B-47 they [India] have produced" (Verbatim Records, p. 6833);

(*c*) The line shown in the body of the map is wholly different from that shown in the Index below; it was for this reason that this edition was soon afterwards superseded by Pakistan Map 40, and was discarded (Verbatim Records, pp. 6722/25, 6726);

(*d*) The inscription on top of the maps mentioning Kutch does not mean that the territory shown belongs to the Kutch State but merely that the survey work of this area was performed by the Kutch Survey Party. The same party surveyed the whole of Nagar Parkar peninsula (up to the 24° 30′ north latitude) and this peninsula was "not thereby converted into Kutch" (Verbatim Records, pp. 6733–34);

(*e*) The line shown by the dash-dash symbol and the double coloured riband in the area of the two loops "does not correspond to what is now claimed as the state boundary".

(2) On Indian Map B-48:

(*a*) It is to be noted, above all, that it is not an original sheet; it has, at its bottom margin, the note: "This is a reprint of Sheets 17, 18, 24 and 25 of Cutch with additions and corrections from extra-departmental information up to 1929.";

(*b*) According to rules issued in 1932, a map could not be called a reprint unless the body of the map was unchanged; but up to that year maps could be called reprints when they actually were new editions of old maps with modifications in the body of the map (Verbatim Records, p. 6742); this is such a case;

(*c*) The extent of the "additions and corrections" that transformed the finished product of Pullan into this kind of alleged reprint can be ascertained not only by comparing it with the plane-table Pakistan Map 69, but still better by comparison with the newly found map submitted now as Pakistan Map 113. While Pakistan Map 69 covered only half of the area of Indian Map B-48 and was dated 1884, this map covers the whole area of Indian Map B-48 and is dated 1886. It is no longer a "planetable"; it has the note at the bottom margin: "Published under the authority of Colonel G. C. De Pree S. C. Surveyor General of India", which means the same endorsement as the Indian Map B-48 but without the mention of any later "additions and corrections". And it has no boundary symbol in its legend on symbols, no boundary symbol in its body and no mention of Kutch (Verbatim Records, p. 6766).

(3) On the remaining maps of Pullan's production and submitted by Pakistan– maps that show no boundary – two new points were made by Pakistan at this stage:

(*a*) The statement of India that Pullan has showed boundaries up to a certain date in 1885 and abstained from showing them only after this date is not correct; it is contradicted by the Pakistan Map 39, which is dated 1881, and Pakistan Map 69, dated 1884 (Verbatim Records, p. 6831);

(*b*) The statement of India that "though Major Pullan did not show the boundary between Sind and Kutch, it was shown as lying along the northern edge of the Rann in the maps published thereafter by the Survey of India" is correct only in the sense that several maps published after Pullan's survey do

show boundaries but not in the sense that Pullan's maps, even though printed much later, show boundaries. The sole exceptions are Indian Maps B-47 and B-48, discussed separately (Verbatim Records, p. 6833). For instance, Pakistan Map 47, which is a reprint dated 1904, has no boundary;

(*c*) The conclusion of (*a*) and (*b*) is, therefore, that "there is not a single sheet of his (i.e., Pullan's original) whether before or after 1885, on which a boundary has been shown between Sind and the Rann".

This last conclusion was underlined by reference to the fact that, while Pullan abstained from showing a boundary of Sind, or indeed any boundary in the Great Rann, he did show other State or province boundaries. For instance, in Pakistan Map 101, which corresponds to Pullan's Sheet 73, he shows a State boundary in the Little Rann by the spacing of letters (Verbatim Records, pp. 6807–08).

Finally, Pakistan interpreted the headings of the Pullan series of maps. They are different (Sind, Sind and Kutch, Kutch and Bombay) but, all in all, prove that, whenever Pullan shows only the northern part of the Rann, he uses only the Sind headings, if he shows only the southern part, then he uses the Kutch nomenclature. He says in the heading of Pakistan Map 69 "Parts of Sind and Cutch", although the map shows the area above the 24th parallel, the reason being that in this sector the traditional boundary runs through Gainda Bet, to the north of the Kutch Government's resthouse or dharamsala on this bet, i.e., slightly to the north of the 24th parallel.

In its reply India submitted a number of new documents, printed and hand-written, and quoted from them to stress with more emphasis the following points:

(1) The correspondence between the Surveyor-General of India, the Acting Political Agent in Kutch and the Government of Bombay during the year 1878 defines clearly the task of the survey to be undertaken; it was to be the "Topographical Survey of the Province of Cutch".

(2) From the same correspondence it follows beyond doubt that the survey of the State of Kutch was approved by the Government of India and the Council of Regency of the State of Kutch (the President of this Council at that time was the Acting Political Agent).

(3) Major Pullan reported to the Surveyor-General of India throughout his survey work, from the first season in 1879–80 to the last in 1884–85, about the progress in surveying the State of Kutch in such a way that it is clear that the whole Rann, to its extreme north, was treated as a part of the State of Kutch.

On this last point a letter of Pullan dated 12 August 1880 was quoted at length. In it Pullan reports that he intends to start the survey of the Rann of Kutch and requests "the active co-operation of the Durbar Authorities" (i.e., Kutch Government), arguing that the "Survey when completed will be of the great use to the Durbars who are very desirous to obtain a reliable map of the country".

In another letter, dated 13 September of the same year, Pullan develops his plan for the surveying of the Rann; he points out that "the Rann is an ever

impending trouble as well met at once and bit by bit co-temporaneously with the more fertile portions of the province".

(4) The Government of Bombay expressly approved Pullan's plan for the surveying of the Rann by informing the Surveyor-General of India "that *'coute que coute'* the Rann survey should be carried on yearly at the same time as the survey of the rest of the Province".

(5) The Reports of Pullan to the Surveyor-General for the seasons 1880–81, 1881–82, 1882–83 and 1884–85 give full account of the progress of surveying the Rann. They mention for every season the portions of it that were triangulated in advance, as a preparatory work, and the portions that were topographically surveyed.

Annexed tabulated statements giving technical details about this work mentioned only Kutch as the State in which the work is being carried out. These statements are separately signed by Pullan.

In his handwritten reports Pullan mentions details about the nature of the Rann including it northern-most part. He mentions such peculiarities as the Meruda Bet as a "very remarkable point, viz. a bare conical rock rising abruptly from the plain to a height of 55 feet; the rock is basaltic and quite denuded of vegetation, save at its foot where a few stunted cactus bushes cluster; the shadow thrown by this solitary mass on the scorched 'Ran' renders the spot a welcome resting place for man and beast when crossing the desert". (Compilation, p. 225.)

Meruda Bet (or hill) is approximately at 24° 8′ north latitude.

(6) Yearly published General Reports of the Survey of India for the seasons when the Rann was surveyed gave account of this undertaking consistently as the surveying of Kutch State territory, throughout the work of Pullan's party. They included a special type of map, called Index Charts, on which the progress of Pullan's Survey was cartographically depicted. Different tints (washes) of yellow, pink and a greenish colour showed the area surveyed in the previous season or seasons, the area surveyed in the current season and the area triangulated in advance. On the exhibited original charts the northern portion of the Rann, above the 24th parallel, is tinted as well as all the rest of the Rann and the Kutch mainland. (To this category of maps belonged the already known reproductions under Ind. Map BB-2 and Pak. Map 93 and the now submitted Ind. Maps TB-19 and TB-20 and Pak. Map 114.)

(7) The General Reports were submitted to the Government of Bombay, who passed Resolutions mentioning and thereby approving the progress of the "topographical survey of Native States" and enumerating those States, including Kutch (see, f.i., p. 218 of the Indian Compilation – Tabular Statement No. 11). The same Reports went all the way up to the Government of India and the Secretary of State for India in London, who, in circular orders, expressed his satisfaction (see, f.i., p. 211 of the Compilation).

(8) Pullan's Survey overlapped into the territory of Sind "to enable him to establish a connexion with Macdonald's Survey of Sind" (see Verbatim Records, pp. 14092–3).

(9) The General Report of the Survey of India for the season 1885–86, published in Calcutta in 1886, i.e., a year after the decision of Pullan not to

depict the Sind–Kutch boundary and the much debated Resolution of the Government of Bombay dated 3 July 1855, gives a full account of the Kutch Survey, in a chapter under this heading. There can be read, *i.a.*, that "the field operations were continued till 31st March 1886, and they comprised the completion of the topographical survey of Cutch with its adjacent 'Ran', and of the peninsula of Nagar Parkar, as well as of small portions of North Gujarat falling within the marginal sheets of the Cutch Survey. . ." "Thus the survey of the Province of Cutch has been brought to a successful conclusion. . ." "Colonel Pullan acknowledges the cordial co-operation and assistance he has received in all matters connected with the survey from Colonel Reeves" (the Political Agent, Kutch) ". . .Diwan Bahadur Manibai Jasbai" (the Prime Minister of Kutch) ". . .also from Duffadar Kali Khan of His Highness the Rao's Police, who accompanied him during the whole of the operations".

The Report also mentions:

> "During the Recess the fair drawing has been completed of Sheets 52 and 53, which were surveyed during season 1884–85, and of Sheets 69, 70, 71, 72 and 73 of this season's work. . ."

Sheets 52, 53, 69, 70 cover the Rann above the 24th parallel and Sheets 71, 72 and 73 cover the Little Rann between Wagur and the States abutting the opposite edge of the Rann – *vide* Index Chart at Pakistan Map 114. (Verbatim Records, p. 14111–2.)

With respect to the two maps of Pullan submitted originally and relied upon by India, Indian Maps B-47 and B-48, it was said on this occasion essentially:

(1) Indian Map B-47 is not "a model map of what the two loops look like or should look like" and would be of no assistance "to draw the boundary from point to point" if it were decided that the boundary was along the northern edge of the Rann. But, this map does show that "Pullan, when he surveyed Kutch and the Great Rann of Kutch, regarded and accepted the Great Rann as forming part of Kutch until the very last year of the survey, 1885"; he has shown, with the boundary symbol, "that Sind ended at the northern edge of the Rann and that the boundary of Kutch and Sind was coterminous although the boundary is not correct from point to point and mile to mile".

(2) Indian Map B-48 is of great significance. It is both correct, showing the boundary on the northern edge of the Rann, and it is accurate. It is based on Pullan's Survey and published in 1929 under the direction of the Surveyor-General of India. This date gives weight to the map. It means that in 1929 the Government of India considered the portion of the Rann above the 24th parallel as belonging to Kutch and with Kutch to the States of Western India. If this map is compared with the corresponding Pakistan Map 113, a map for the same area but without boundary symbols and dated 1886, the conclusion is that all doubts about this boundary have meanwhile been dissipated, that "what may have been regarded as uncertain in 1886 is regarded as certain by 1929".

(3) The Pakistan argument based on Pakistan Map 39, a Pullan map of the Khori Creek sector, to the effect that Pullan showed no boundaries even before 1885, is not convincing; the lines, both on this map as well as on its continuation, the Indian Map B-47, are not, as Pakistan says, limits of survey; they do not

correspond to so-called traverses of surveyors; on the other hand, most subsequent official maps, 32-mile map series, accepted the finding of Pullan that Kutch extended across the Khori Creek and possessed a foothold on its western bank; this series – and other maps – show, although modified, this foothold first shown by Pullan on Pakistan Map 39. On this point "Pullan shows the boundary of Kutch as comprising some areas on the western bank of the Khori Creek; he was not wrong here; in fact the subsequent 32-mile maps support what he says and the 1914 Resolution upheld that claim."

That becomes clear by a study of subsequent official maps, in which Pullan's alignment of the Kutch–Sind boundary in the Lakhpat region and along the two loops has been endorsed: two proof maps to Aitchison's *Treaties* of 1892 (Ind. Maps TB-20B and TB-20C), Aitchison's map 1908 (Ind. Map TB-17), and the Third and Fourth Editions of the 32-mile map of India (Ind. Maps B-50, BB-3 and B-51). Pakistan Map 39 of 1881, showing the Lakhpat region, and its continuation to the north in Indian Map B-47 (including the two loops), depicts with Thuillier's symbols for political boundaries, dash-dash, what is evidently the Kutch–Sind boundary.

India concluded by saying:

(1) The Rann which Pullan surveyed was recognised and recorded by him as forming part of the Kutch State from the beginning until 1885; he did not survey it as a geographical necessity or because the Rann was intimately connected with Kutch. The truth of the matter is that right from the beginning until 1885 he accepted and recognised the Rann as belonging to Kutch and under his own signed statements he showed the Rann right up to the northern edge as forming part of the Kutch State.

(2) The Sind–Kutch boundary was accepted and recognised as conterminous. If the case that this is a separating entity between States were correct in any way, history would never have run during the six years of the survey as it did in fact. The documents produced by India leave no doubt that the Sind–Kutch boundary was conterminous and it was surveyed as such by Pullan.

(3) The omission of Pullan to draw boundaries in 1885–86 was rectified in Indian Map B-48, which shows the Diplo/Kutch boundary and is based wholly on Pullan's Survey. It fills most of the gap between Erskine and Osmaston and completes the second check all along the boundary depicted by Macdonald. The boundary with the boundary symbol lying along the northern edge of the Rann will be noticed. This boundary separates Sind from Kutch and shows Dhara Banni as belonging to Kutch.

7A. *The Survey of Parts of Sind in 1904–5 (Erskine)*

In the Indian Memorial it is said in paragraph 129:

> "In 1904–05, portions of Karachi and Hyderabad Districts were resurveyed by a Party of the Survey of India, functioning under the Superintendent, Trigonometrical Survey. The Sheets prepared on the basis of this survey were numbered 73, 74E, 93W and 94W of the Survey of India. Sheet No. 73 (B-9), which was published in 1906, relates to parts of Hyderabad and Karachi Districts and a portion of the Rann to the south thereof. According to the legend, the Province or State boundary is shown by the symbol –. .–. .. In the light of this symbol, it will be observed that no part of the Rann of Kutch

which is covered by this sheet is included in the Hyderabad or Karachi District. Sheet No. 74E (B-10), which was prepared in 1907, maps out parts of Karachi and Hyderabad Districts. The State boundary is shown by the symbol —. .—. . and a double colour riband – purple and yellow. The Rann of Kutch shown in this sheet is not thus included in the Karachi or Hyderabad Districts. The boundary symbol (accompanied by the double colour riband) indicates that the Rann of Kutch belonged to the adjoining State of Kutch. The third sheet (B-11), prepared in 1907 and bearing number 93W and 94W shows a part of Hyderabad District and its boundary is indicated by the symbol —. .—. . , conveying thereby that the territory lying to the south was not a part of the District. It is significant to note that this territory is described as belonging to Kutch."

The surveyor in charge of this task was C. F. Erskine. His name appears at the bottom of the above-mentioned Indian Maps B-9, B-10 and B-11.

In the Pakistan Memorial, Erskine's Survey and his maps are not expressly mentioned but are evidently covered by the remark, in Annex F, that "the Survey of India in other maps, without any authority in that behalf, incorrectly showed the area of Sind left out of the Sind Revenue Survey" (i.e., Macdonald's Survey) "as being outside Sind, and again without any authority, subsequently put symbols of higher and higher status on the lines shown as a boundary till it was ultimately shown as the provincial boundary."

The maps in question are expressly described in Pakistan's Counter-Memorial, paragraph 158, as maps which are a consequence of cartographical confusion and are among the maps where an error has been repeated.

The Indian Final Memorial refers to Erskine's Survey when stating: "The north–south line was again confirmed as the boundary of Sind in the survey undertaken in 1904–05 (*vide* CCC-2 and the Index map therein)" (Indian Final Memorial, Vol. I, p. 7).

As an Annexure to the Indian Final Memorial appears the Survey Report for the year 1904–05, under the mentioned Indian Document CCC-2, a Report on the work of Erskine's Survey Party. It contains on its page 29, an Index Map of the area surveyed by this party.

In its opening statement, India referred to Erskine's Survey (Verbatim Records, pp. 151–62) as a fresh survey which confirmed the boundary alignment as claimed by India.

With respect to Indian Map B-9, showing the Jati–Badin–Rann trijunction sector, it was stressed that the legend has distinct symbols for "Province or State boundary", namely —..— (dash two dots dash), for "District boundaries", namely —.— (dash dot dash), and for village boundaries, the same as district boundaries but smaller. The vertical line and the first loop have the province or State boundary symbol. For Indian Map B-10 it was stressed that it has, besides the —..— symbol, a double coloured riband along the —..— symbol; both together are shown in the legend as the State boundary and appear on the map around the southern tips of the two loops and the continuation, southward, of the vertical line, in both cases as an accurate continuation of the —. .— symbol line of Indian Map B-9. On Indian Map B-11, it was said, the —. .— symbol is again explained as the State boundary symbol and it appears along the southern limit of the second loop, for as much as there is of that loop.

The headings and other inscriptions on the maps were mentioned. It was pointed out that the heading of Indian Map B-9 reads "Parts of Districts

Hyderabad and Karachi". When showing a "Province or State boundary" along the vertical line and the first loop, it evidently excludes the shown portions of the Rann from the two Sind districts and thereby from Sind. The same applied to Indian Map B-10. Indian Map B-11 is more explicit. While Indian Maps B-9 and B-10 have the inscription "Rann of Cutch" over the portions of the Rann shown, Indian Map B-11 has the inscription "Cutch". In other words, while Indian Maps B-9 and B-10 excluded the Rann from Sind, Indian Map B-11 excluded it from Sind and included it in Kutch.

It was stressed that all three maps were published under the authority of the Surveyor-General of India.

These propositions on Erskine's Survey were discussed and partly challenged by Pakistan in its answer (Verbatim Records, pp. 6842–6943 and 7677–81).

The essential points made in the statement were the following:

(1) The Index Map in Indian Document CCC-2 shows the same rank of boundary along the vertical line and the two loops.

(2) The inscriptions on the three maps are not consistent. What is called the Rann of Kutch on Indian Maps B-9 and B-10, where Kutch is nowhere mentioned, changes into Kutch on Indian Map B-11. "One can even go to the point of demonstration of how the Survey Department became confused over this area. The Survey Department are not themselves very clear as to what they are doing." (Verbatim Records, pp. 6886–91.) They put the inscription "Rann of Kutch" on the first two maps and "suddenly" changed this into "Kutch" on the third map, departing from the first two sheets without any explanation.

(3) The Survey Department, by so doing, went beyond the limits of its authority. No previous map had shown Kutch as extending to this or any similar line. Macdonald did not so show it. He showed Kutch across the Khori Creek in the Lakhpat sector, but not above the 24th parallel. Pullan did not so show it. Here, on Indian Map B-11, Kutch for the first time comes up to the northern edge of the Rann. Whoever so inscribed it acted wrongly. "He had no business, no right and no authority to show it. He is departing from the other two sheets. No authority has been cited for this stage."

> "So we get to the position that in the official maps of the Survey of India the first clear manifestation of confusion takes place in 1904–05 in the shape of Sheet B-11. There is no authority for the Surveyor General to do so. He was clearly wrong, but if he has done so he was under a misapprehension of some kind or allowed a misapprehension to take effect in the shape of this map." (Verbatim Records, p. 6942.)

(4) The boundary as shown on these maps does not follow a physical feature, the Rann, as a geographic entity. "It is a boundary not following physical features, but following something else." On Indian Map B-9 it is particularly clear that physical features along the boundaries are the same on both sides of the depicted boundary. (Verbatim Records, pp. 6886–91.) On the other hand, "these boundaries are not Macdonald's boundaries. They are being taken from somewhere. The General Report (Ind. Doc. CCC-2) explains that Erskine followed Macdonald's pillars where he could find them, but where he could find no pillars he has followed something which he refers to as settlement maps". (Verbatim Records, pp. 6896–7.) These maps are new ones, not those of Macdonald's time, and they differ from the Macdonald village or deh maps.

On this point, which seemed to be the most important one, Pakistan quoted yearly Reports of the Erskine Survey Party for the years 1895–96 to 1903–04 and the General Report (Ind. Doc. CCC-2) and produced original examples of new village or settlement maps. By making a mosaic of them and underlining the outer alignment of the village boundaries, Pakistan demonstrated their concordance with the "province or state" boundary as shown in the corresponding sector of the Erskine maps (the southern part of the second loop). It appeared that Erskine, following these new maps, modified to some extent Macdonald's line with the result, f.i., that he included in Badin Taluka (of Sind) territory which Macdonald's map was outside this taluka. The most striking case of this kind was the one concerning the tract of land called Sinatri Dhand, at the south-eastern end of the second loop. This tract was incorporated by Erskine in Badin Taluka, while in Macdonald's Sheet 92 it was outside this taluka. And Pakistan drew from this fact the following conclusion:

> "...the very fact that the Sind authorities are in a position on their own option, according to the villagers' demonstration, to extend or to contract a village boundary shows that this is not a Kutch boundary. It is not possible for villagers and officials in Sind to be doing this. They cannot say that although this was Kutch territory yesterday, today we have decided to convert it into Sind territory; and although this was Sind territory the day before, tomorrow we will make it Kutch territory. It is Sind territory. Whether it gets included in a Deh or whether it is excluded from a Deh is their option and is an internal local matter. The very fact of this changing from time to time is proof...of the fact that the territory on the other side does not belong to anyone else. It is not a possible procedure for the Sind authorities to say that though Kutch is on the other side, without asking Kutch, without informing Kutch, they will encroach upon Kutch territory... This is not possible.
>
> "...Kutch has nothing to do with it. Kutch is not consulted! Kutch is not asked; Kutch is not anywhere in the picture". (Verbatim Records, p. 6897.)

India's reply to the above points made by Pakistan (Verbatim Records, pp. 14173–263) was mostly based on newly submitted documents, nearly all available in originals shown to the Tribunal and in photostatic copies joined to the Tribunal's papers.

India answers the various points raised by Pakistan thus:

As the General Report for the season 1895–96 shows, the Commissioner in Sind had asked for a "re-survey of Sind" and accordingly the task of Erskine was to re-survey Sind. All the General Reports between the years 1895–96 and 1904–05 set out the progress of the survey, describing the survey as the survey of the Province of Sind. The General Report for the Season 1904–05 contains an Index Map showing the whole of Sind as surveyed or triangulated in advance; it shows the political boundary of the Province of Sind – the political boundary of Sind – as conceived by the Government of India. The words "Kutch Agency" are written in the Index Map as going even above the 24th parallel. The maps of the relevant area prepared on the basis of Erskine's Survey, Indian Maps B-9, B-10 and B-11, indicate the province or state boundary with a dash and two dots; the Table of Symbols provides the dash and one dot symbol for the district boundary. The symbols thus define the boundary of the Province of Sind and not of any district of Sind. Pakistan Map 115 also shows the political boundary of Sind by the correct boundary symbol, namely a dash and two dots.

When Erskine was at work in the Jati Taluka he made a reference to the

Commissioner regarding the boundary between the Jati Taluka of the Karachi District and the Kutch State. The Commissioner thereupon addressed, on 27 September 1905, a letter on the matter to Lieut.-Col. Abud, Political Agent, Kutch, which reads thus:

> "I have the honour to address you on the subject of the demarcation of the boundary between the Jati taluka of the Karachi district and the Cutch state. No. 12 party of the Survey of India are at work on that part of the Karachi district and have requested instructions as to how the boundary should be laid down.
>
> "2. The nearest fixed boundary mark which is at present in existence is that at the tri-junction of the Badin taluka of the Hyderabad district, the Jati taluka of the Karachi district and the Rann of Cutch; and the existing topographical maps all show the boundary of Jati taluka to proceed in a straight line almost due south to a point on the northern bank of the Khori creek east of the present *musafir-khana* [resthouse] at Kotri, the boundary from this point between Jati and Cutch being the Khori creek. I have carefully examined all the available records on the subject and find that this boundary is in accordance with them. I am therefore prepared to ask Government to sanction it, but, before doing so, have the honour to request that you will ascertain from the Cutch Durbar whether they agree to it. As the survey party will probably be proceeding to field work next month, I should be obliged if you will let me have your reply before the end of October.
>
> "3. I enclose a statement of some of the authorities which support the proposed boundary. I believe the Cutch Durbar built and maintain the *musafir-khana* on the western bank of the Khori creek at Kotri; but this is an obviously convenient arrangement as Lakhpat is far the nearest town and arrangements for crossing the creek can most suitably be made from it; the fact does not I think, constitute any claim to the land.
>
> "4. I also enclose the revenue survey map of the Jati taluka which shows the boundary as now proposed." (Ind. Doc. AA-9.)

This letter shows that the Commissioner was aware that the boundary between Kutch and Jati Taluka lay along the vertical line and the Khori Creek and wanted confirmation from the Political Agent, Kutch, as the boundary of Kutch was involved. The further correspondence, at Pakistan Documents B.113, B.114 and B.115, shows that the Political Agent, Kutch, feared that, if the views of the Kutch Durbar were asked in the matter, the Durbar were likely to claim the land to the north and west of the Khori Creek and the whole question of the boundary between Sind and Kutch would be raised; that the Commissioner in Sind referred the matter to the Government of Bombay, expressing the view that the question would have to be settled one day or the other and that the sooner it was settled the better; and that the Government of Bombay, by a letter dated 23 November 1905, informed the Commissioner that they considered that "the question might well be left alone till we are forced to take it up". The important thing to be noted is that, if Erskine drew the boundary as Sind said it should be drawn, the question would be: Would Kutch agree to it? Should its approval be asked? The ultimate decision was: Do not ask Kutch, because it may claim something to the west of the Khori Creek. The letter of the Commissioner to the Political Agent proceeds on the basis that the Kutch–Sind boundary is conterminous and that the boundary lies along the vertical line and the Khori Creek; he says: We agree to this boundary, this is the correct one but we would like to ask Kutch whether they would agree with it. After receipt of the decision of the Government of Bombay, the Acting Commissioner in Sind wrote to

Erskine, on 19 February 1906, with reference to his earlier enquiry how the province boundary between Jati Taluka and Kutch State should be shown, asking him to "favour the Commissioner" with a tracing of the draft survey map showing details of the "present state of the Khori Creek and the country in its vicinity" as the sketch sent to the Collector was not sufficiently detailed. Mr. Rich was then the Officer in Charge of the Survey party in place of Erskine and Rahimtulla, an officer in the party, wrote to Mr. Rich on the matter, stating that in the trace sent to the Collector about one mile on each side of the boundary was detailed and suggesting that a trace about four miles to the west of the boundary and all that appeared as overlap on the field sections towards east might be given. He added:

> "The maps being on two different scales, one set will either have to be reduced or the other enlarged. This question was referred to Collector of Karachi early in last recess (May or June); when he gave us no satisfactory reply until August or Sept. last, we then referred it to S.T.S. and he almost decided that the boundary should be drawn straight from a point in Sh. 73 to another point in Sh. 75, approximately in the old position (because the old mark was washed away by the sea). It has been so drawn in our fair sheets. This boundary practically agrees with that on the old revenue survey sheets. . ."

S.T.S. sent the reply to the letter of the Assistant Commissioner, despatching to him a trace showing the boundary between Jati Taluka and Kutch State. The Assistant Commissioner thereafter asked S.T.S. what the line shown in the trace with the dash and two dots was intended to indicate and desired him to draw a line on the trace showing the boundary between Sind and Kutch as then indicated in the revenue survey maps of Sind. In reply, S.T.S. informed the Assistant Commissioner that the symbols bar and two dots on the trace represented "the present boundary" between the Province of Sind and Kutch State; he also drew a different line on the trace to show the Sind–Kutch boundary as on the old revenue survey maps. It was after all this correspondence that Erskine showed the boundary between Kutch and Sind in his maps (Ind. Maps B-9 to B-11).

India draws attention to Indian Map B-26 published under the direction of the Surveyor-General of India in 1931 on the basis of the surveys in the Seasons 1868–69 and 1904–05, i.e., on the Surveys of Macdonald and Erskine, and says that it shows the boundary of Sind and Kutch (States of Western India) as conterminous and that it also shows the exact point to point alignment of that boundary which is broadly the alignment claimed by India, namely, the northern edge of the Rann.

India sums up by saying:

(i) Erskine's Survey constituted an independent check on Macdonald's boundary of Sind along the northern edge of the Rann – the two loops and the vertical line – and reaffirmed that boundary generally. If there had been any substance in the view that there was any confusion or error in the Macdonald line or that that line was not the correct political boundary of Sind, undoubtedly the matter could have been set right when it came to the second survey.

(ii) There are no doubt minor variations between the boundaries of Macdonald and Erskine which are explainable (*a*) by Kutch not being consulted, and (*b*) by the insignificant value of the terrain. It was a matter of judgement of the Survey Department applied to the facts placed before it at the relevant time. As regards

the two bits of the Rann (Sinatri Dhand and Rahim ki Bazar), Macdonald came to one conclusion and Erskine came to another. Sind had the maximum it could possibly claim on these maps; they were binding on Sind although they would not be binding on Kutch because Kutch had not been consulted.

(iii) Indian Maps B-11, B-26 and the correspondence between the Commissioner in Sind and the Political Agent, Kutch, and the Assistant Commissioner and S.T.S. provide clear evidence that there was a conterminous boundary between Sind and Kutch.

8A. *The Survey of Parts of Sind and Parts of the States of Western India in 1937–38 (Osmaston)*

Parts of Sind and parts of the States of Western India were surveyed in 1937–38 under the direction of the Survey of India. The surveyor in charge was Major G. H. Osmaston.

The Indian Memorial mentioned this survey in paragraph 150 which says that the Surveyor-General of India published in 1939 three maps (Nos. 40L/SW, 40L/SE and 40L/NE) based "on the survey of 1937–38", i.e., on Osmaston's Survey, which "show a portion of the Thar Parkar District lying to the north of the Rann of Kutch and, according to the Administrative Index and the boundary symbol of –.–., which is accompanied by a double colour riband, the portion of the Rann of Kutch appearing in the sheets did not lie within the Thar Parkar District".

Reproductions of the three maps mentioned in the above paragraph appeared in the Annex under Indian Maps B-33, B-34 and B-35.

Like Erskine's maps, these maps are covered by the criticism of Pakistan in its Memorial as maps in which the Survey of India "incorrectly showed the area of *Sind* left out of the Sind Revenue Survey as being outside *Sind*", and the same sheets are expressly covered by the general proposition of Pakistan in its Counter-Memorial as maps containing "wrong depictions (due to cartographical confusion)" and "repeating an error" (para. 158).

Besides, the Pakistan Memorial, in its paragraph 33, deals with the 1937–38 topographical survey from a special angle. It shows this survey as having given rise to one of the instances when the Sind–Kutch boundary "came under particular consideration". In consequence of this consideration some maps published under the authority of the Surveyor-General of India had the word "disputed" entered along the boundary depicted roughly as claimed by India. Such is a map of India showing provinces, States and districts on a 70 miles to 1 inch scale "first prepared in 1938 and reprinted in 1946 and 1947". "Similarly a map showing forests, irrigation and water power, prepared in 1942".

Reproductions of these three maps were submitted as Pakistan Maps 35, 36 and 37.

Osmaston's Survey as such and the three above-mentioned maps produced by Osmaston were pointed to also in the review of all maps submitted by India, in Annex J of the Pakistan Counter-Memorial. It was stressed there that these maps themselves reflect the vacillation of the Survey of India. The printed legend on all three maps contains the mention: "The boundary between Sind and the

States of Western India is taken from previous maps." Indian Maps B-33 and B-35 have at the top a rubber stamped text saying that "the map is not to be published, copied or reproduced and is to be kept in safe custody and handled by authorised persons only for departmental use". It was further stressed that the Sind–Kutch boundary is marked – according to the legend – as a demarcated State boundary. "It being the admitted position", concluded the Counter-Memorial, "that there is no demarcated boundary between Sind and Kutch in the areas covered by these maps, the boundary marked is manifestly wrong and undependable."

In its Counter-Memorial India referred to the correspondence which took place between Osmaston on the one hand and the Sind authorities and the Resident of the States of Western India on the other and stated that Osmaston, after consideration of all the material before him, decided that Sind had no claim to any part of the Rann and accordingly drew the boundary lines on his maps. As regards the 70-mile map of India, India explained that the word "Disputed" was directed to be removed from all the stock copies of the 1938 edition but inadvertently the correction was not carried out in the plate and the mistaken entry appeared in the reprints represented by the Pakistan Maps 36 and 37; Pakistan Map 35 was also prepared with the same plate.

The Pakistan Final Memorial dealt with Osmaston's Survey predominantly as an issue about the Sind–Kutch boundary.

During the oral hearings Osmaston's Survey was first mentioned by India in her opening statement (Verbatim Records, pp. 337–50). It was pointed out that the survey was, from the topographical point of view, an excellent one. It gave, in the maps produced, even the height over the Rann and the height over the mean sea level in feet for a great number of spots in the Rann and on its edges. As to the boundary depicted as a State boundary on the three Osmaston maps, there was no doubt left that it was considered as the Sind–Kutch boundary and the Rann above the 24th parallel, the only portion of the Rann appearing on these maps, as belonging to Kutch. All three maps mention Kutch State in their headings. Indian Maps B-33 and B-34 have an "administrative index" at the bottom and in this index the inscription "Cutch State SWI" appears printed over the Rann above the 24th parallel, the only portion of the Rann appearing on Maps B-34 and B-35 where portions of the extreme north-eastern part of the Rann appear, the administrative index has a significant inscription precisely over these portions. It reads: "Area in dispute between Wav State (Sabar Kantha Agency), SWI and Cutch State SWI". On this last point India concluded that the inscription correctly "localises the so-called dispute, it pin-points the locality to which it is confined, describes the parties between whom is the dispute", i.e., a dispute not involving Sind.

In the answer of Pakistan, Osmaston's Survey was dealt with at some length (Verbatim Records, pp. 6947–7272 and 8216–33), but, again, predominantly as an issue about the boundary and not as a survey. As to the Osmaston maps as such, they were rather left aside. The three compiled maps submitted by Pakistan, Pakistan Maps 35, 36 and 37 were, instead, put forward again and it was asserted, contrary to India, that the word "disputed" was put on them at

the correct place and not at the wrong one, the boundary dispute having clearly involved Sind also and not only Kutch and Wav.

Thus the question of Osmaston's Survey became and remained until the end of the oral hearings a question less related to surveys and maps as evidence than to the boundary as an issue.

The debate threw light on the following events.

According to the usual procedure, the Camp Officer of the Survey Party, with a view to checking the boundaries, invited the representatives of Nagar Parkar Taluka and of Kutch and Wav to point out their respective territorial limits. The Mukhtiarkar of Nagar Parkar, on the basis of the Memorandum of the Collector of Thar Parkar, dated 31 December 1927 (Pak. Doc. B.20), contended that half of the Rann was a part of Sind; the representative of Kutch asserted that the entire Rann was within the territory of Kutch while the representative of Wav claimed some portion of the north-eastern Rann as belonging to Wav (Pak. Docs. B.22, B.23 and B.24).

The Mukhtiarkar reported the position to the Deputy Collector, requesting him that "old Government records lying in the Collector's office may kindly be got searched to find out any Government authority to elucidate this point and if necessary a reference may be made to the Government of Sind" (Pak. Doc. B.231). The Deputy Collector took up the question with the Collector, stating that though the Magistrates in charge of Nagar Parkar, Diplo and Mithi Talukas had been exercising their jurisdiction as criminal courts as far as half the Rann, there was nothing on his record beyond the Collector's Memorandum dated 31 December 1927 and if necessary a reference might be made to the Government of Sind (Pak. Doc. B.230). He also made enquiries with the Mukhtiarkars of Diplo, Mithi and Nagar Parkar; the Mukhtiarkar of Diplo said that the Collector's Memorandum was the only traceable basis for claiming half the Rann as belonging to the British; the Mukhtiarkar of Nagar Parkar stated that there was nothing to support the Sind case to half the Rann, urging nevertheless that in fairness and on administrative grounds half the Rann should come to Sind; and the Mukhtiarkar of Mithi reported that the village staff and authorities were under the impression that half the Rann belonged to Sind because of the Collector's Memorandum of 1927 although there was no record to support that Memorandum (Pak. Docs. B.232, B.233 and B.234). The Deputy Collector frankly informed the Collector that it was ever since the Collector's Memorandum of 1927 that half the Rann had been considered as falling within the territorial jurisdiction of Thar Parkar District and that in the absence of any documentary evidence in support of the contention, the case was "rather weak" (Pak. Doc. B.235).

The Collector pursued the matter with the Superintendent of Survey and Land Records in Sind; on the latter's enquiry the Collector informed him that "there were no Government orders under which half the Rann of Kutch is to be regarded as belonging to the British Government" (Pak. Doc. B.252). Finally, the Collector informed Osmaston that "the external boundaries of Thar Parkar District stand unaltered as originally taken from the Survey of India maps" (Pak. Doc. B.246).

Meanwhile, the Dewan of Kutch, learning that the Mukhtiarkar of Nagar Parkar had laid claim to half the Rann, wrote to the Resident for the States of Western India, expressing his surprise at the claim made and asserting that there was never any doubt that the entire Rann belonged to Kutch (Pak. Doc. B.167/ Ind.). Osmaston also asked the Resident to show the correct alignment of the external boundaries of Thar Parkar District with Wav and Kutch States and the Secretary to the Resident informed him that as the boundaries were undemarcated and "are apparently in dispute", it was not possible to show the correct alignment (Pak. Doc. B.25).

Osmaston continued the enquiry with the Superintendent of Survey and Land Records in Sind and after obtaining further explanations from him came to the conclusion that the statement of the Mukhtiarkar of Nagar Parkar contending that half the Rann belonged to Sind was "nullified" and that the only dispute was between Kutch and Wav for a bit of the Rann area (Ind. Doc. AA-14). This was in April 1939.

In June 1939, Osmaston proceeded on leave and Mr. Strong was temporarily in charge of the survey party. On an enquiry by the Collector of Thar Parkar whether any settlement had been arrived at and the boundaries fixed, Mr. Strong by return mail informed him that as the authorities of Sind, Kutch and Wav still differed as to the correct alignment of the boundary, no decision could be arrived at by him and he proposed to omit the boundary from the survey maps (Pak. Doc. B.26). After consulting the Superintendent of Survey and Land Records, the Collector replied to Mr. Strong it would not be proper to omit the boundary from the survey maps and the boundary might be shown as in the old maps by means of a special symbol and a foot-note be made indicating that it was in accordance with the old records but was in dispute (Pak. Doc. B.27).

The maps published as a result of this survey, Indian Maps B-33, B-34 and B-35, show a province or State boundary along the northern edge of the Rann with —.—. symbols and a double colour riband. A small area in the north-eastern portion of the Rann is shown as in dispute between Kutch and Wav.

Pakistan argues that this is one of the instances when the Sind–Kutch boundary "came under particular consideration" and criticises these maps as incorrectly showing the area of Sind. India, on the other hand, argues that after a thorough enquiry Osmaston came to the conclusion that the contention of the Mukhtiarkar of Nagar Parkar was frivolous. Pakistan lays stress on the letter of the Secretary to the Resident for the States of Western India in which he stated that the boundaries were apparently in dispute; according to India only three years earlier the Resident had himself approved the map of the States of Western India, Indian Map B-52, in which the entire Rann was shown to be within the territory of Kutch and obviously the Secretary to the Resident was completely unaware of the fact.

In April 1939, the History Sheets to Indian Maps B-33, B-34 and B-35 (Pak. Docs. B.256, B.257 and B.258) and Publication Instructions regarding these maps (Ind. Map TA 84) were finalised. These documents bear the signatures of the Section Officer, Osmaston and the Director, Geodetic Branch.

The History Sheet for Indian Map B-34 (Pak. Doc. B.257) contains a scored

out passage wherein it was mentioned that the boundaries of Thar Parkar District and Kutch State and between Thar Parkar District and Wav State were disputed according to the representatives of Thar Parkar, Kutch and Wav. The passage was scored out on 10 April 1939 over the signature of one J. N. Kohli. In the substituted passage, it is stated that the boundary was surveyed following the limit of the Rann of Kutch, no actual verification was received from the Thar Parkar authorities and as a last resort the boundary, as surveyed, was compared with the maps received from the Superintendent of Survey and Land Records in Sind and found to agree. The History Sheet is signed by Osmaston on 11 April 1939 and by the Director on 22 April 1939.

The History Sheet for Indian Map B-33 (Pak. Doc. B.256) appears to have undergone similar changes since a slip is pasted over the original statements regarding the boundary. It is signed by Osmaston on 10 August 1938 and by the Director on 17 April 1939.

There are no corrections in the History Sheet for Indian Map B-35 (Pak. Doc. B.258), which is signed by Osmaston on 6 April 1939 and by the Director on 17 April 1939. It contains a passage similar to the corrected passages in the other two History Sheets.

Referring to the corrections in the History Sheets for Indian Maps B-33 and B-34, Pakistan says that Osmaston was anxious to wind up the matter after waiting for more than a year and the History Sheets, in which a kind of arbitrary course was taken, had been prepared meanwhile. India's explanation of these corrections is thus: when a History Sheet is written, it is signed at the time when it is originally prepared but the Director has to sign it before it becomes the final document. After Osmaston signed the History Sheet for Indian Map B-33, certain things intervened and a correction was put in by way of a pasted slip and the History Sheet brought up to date. The History Sheet for Indian Map B-34 was signed by Osmaston after the correction was made taking account of the intervening events. The Director, whose signature counts the most, signed the two History Sheets after the corrections were incorporated.

Indian Maps B-33, B-34 and B-35 contain a foot-note that "The boundary between Sind and States of Western India is taken from previous maps" but the Publication Instructions (Ind. Map TA 84) did not contain such a foot-note.

9A. *The Indian Atlas Series*

The Indian Memorial mentioned in its paragraphs 126, 134, 135, 136, 137, 138, 139, 143, 147 and 155, a group of maps representing one of the two most important categories of compiled maps. This category is composed of the Indian Atlas Series or Indian Atlas Sheets and their reprints, usually called, for reasons of convenience, the "quarter inch sheets" because of the scale of both the Indian Atlas Sheets and of their reprints (a quarter of an inch to one mile).

In the Annex to the Indian Memorial one can find four maps that were reproductions of Indian Atlas Sheets, Indian Maps B-4, B-5, B-6 and B-44 (a mosaic of four sheets) and reproductions of ten reprints of the Indian Atlas Series, i.e., of quarter inch sheets, Indian Maps B-17, B-18, B-19, B-20, B-21, B-22, B-30, B-36, B-37 and B-40.

The submitted reproductions of the Indian Atlas Sheets have the heading "Indian Atlas", while the reproductions of reprints, i.e., of quarter inch sheets, have headings indicating the depicted States or provinces: Sind and States of Western India; Bombay and Sind; Bombay, Rajputana and Sind. Both groups together cover most of the Sind–Kutch boundary as understood by India, from the Arabian Sea to and including the Nagar Parkar Peninsula. The dates range from 1872 (an 1895 reprint) to 1943.

In the above-mentioned paragraphs of the Indian Memorial the following qualities of this category of maps were pointed out:

(*a*) Indian Maps B-4, B-5, B-6 and B-44 are expressly stated to have been published under the authority of the Government of India;

(*b*) All the maps of the series have the appropriate dash-dot-dash boundary symbol and some of them (Ind. Maps B-17, B-18, B-19, B-22 and B-30) the double coloured riband or a one-colour riband (Ind. Map B-44) indicating clearly the alignment of the conterminous Sind–Kutch boundary;

(*c*) Headings of the maps clearly indicate that the territory beyond the Sind boundary was Kutch territory; with the exception of Indian Maps B-4, B-5 and B-44 the heading contains the indication that the map shows part of "Cutch State";

(*d*) On all the quarter inch sheets there is at the bottom the usual administrative index which invariably shows the territory in question as belonging to "CUTCH SWI" (Kutch, States of Western India).

The conclusions followed in paragraphs 220 and 227; they were that the submitted maps of this category show "that the southern boundary of Sind lay along the northern edge of the Rann" and that "the entire Rann of Kutch was within the Kutch territory".

The above group of maps was expressly covered by the general remarks in the Pakistan Memorial, paras. 124–158, relating to maps that are inaccurate and are the result of cartographical confusion.

In the review of all maps submitted by India, in Annex J of the same Counter-Memorial, some specific remarks were made with regard to the above maps. They were essentially the following:

(*a*) Indian Maps B-4 and B-5 do not mention the State of Kutch in spite of the fact that they show a portion of the Rann of Kutch;

(*b*) The line dividing the districts of Sind from the Rann of Kutch is marked with the same symbol as the lines dividing these districts from each other in Indian Maps B-4, B-5 and B-6;

(*c*) Several maps are in contradiction with each other; for instance Indian Map B-19 is a reprint of Indian Atlas Sheets (shown partly in Ind. Map B-5) yet it shows a conterminous boundary while the atlas sheet does not show it;

(*d*) These maps are based on original surveys yet do not strictly follow them; the Indian Map B-4, f.i., expressly purports to be based on the surveys conducted by Captain Macdonald; it has, however, a different alignment in the Rahim ki Bazar area; Indian Maps B-17, B-18 and B-22 purport to be corrected up to 1921, i.e., subsequent to the 1904–05 Survey of Erskine, they show, however, a

boundary between Sind and Kutch in Badin Taluka that is at variance with the line shown as the boundary of Sind in the 1904–05 survey maps;

(*e*) The Resolution Map, Indian Map B-44, compiled of four atlas sheets, shows a yellow riband separating Kutch from the Rann; it appears narrower than the purple riband which separates Sind from the Rann, but there is no legend to indicate what either riband means.

India met these remarks in her opening statement (Verbatim Records, p. 1032 ff.) with the following points:

(*a*) The fact that some maps (Ind. Maps B-4, B-5 and B-44) do not mention Kutch in their headings does not mean that the portion of the Rann shown on them is a part of the Sind districts that are mentioned: a map cannot be cut off at a boundary that it shows;

(*b*) The boundary symbol on the outer side of the Sind districts shown on the same maps (Ind. Maps B-4, B-5 and B-6) is, indeed, the symbol for district boundaries; but as such it precisely excludes the shown portions of the Rann from these districts; since there are no other Sind districts beyond this line, this line is simultaneously the province boundary of Sind; the Surveyor-General's Circular Order No. 27 prescribed identical boundary symbols for provinces, districts and large Indian States;

(*c*) The label "Rann of Cutch" in itself is not a statement indicating the State to which it belongs; the essential matter is that the Rann is excluded from Sind districts by a boundary symbol while it is not excluded by a similar symbol from the Kutch mainland (see Ind. Map B-6); the only boundary symbol on the three maps taken together (Ind. Maps B-4, B-5, B-6) that can possibly show a province or State boundary is the one, roughly, as claimed by India;

(*d*) The yellow riband around the mainland of Kutch on Indian Map B-44, a riband not coupled with a symbol (as the purple riband on the opposite is coupled) cannot possibly mean a State boundary; it runs into Kutch itself, at the lower right of the map; it is nobody's case that there is anything but Kutch territory.

The reprints of the above-mentioned four maps, listed as Indian Maps B-17 to B-22, were also dealt with at this stage and the points made with reference to them in the Memorials were reaffirmed (Verbatim Records, pp. 241–271). The same occurred with reference to Indian Map B-30 (Verbatim Records, pp. 311–312) and Indian Maps B.36 and B.37 (Verbatim Records, pp. 352–356). Indian Map B-40, a mosaic map, on a $2\frac{2}{3}$ miles to one inch scale, was mentioned separately (Verbatim Records, p. 366) as a sheet showing the preparatory stage for atlas or quarter mile sheets made, when necessary, by reduction of maps on a larger scale.

In reaffirming its points with reference to these reprints, India suggested more particularly the consistency of the Survey of India in producing this type of map, for general administrative purposes, over a long period of years, and always, roughly, with the same boundary alignment between Sind and Kutch. The first of the group of reprints was, indeed, prepared in 1921 (Ind. Map B-17) and the last (Ind. Map B-37) was an edition of 1943. The preparatory mosaic sheet (Ind. Map B-40) was dated 1946.

In its answer, Pakistan repeated the criticism of its Counter-Memorial with reference to the Indian position on the three atlas sheets, Indian Maps B-4, B-5 and B-6. It was more particularly emphasised that Indian Maps B-4 and B-5, where portions of the northern part of the Rann appear, do not mention Kutch State in their heading, while Indian Map B-6, showing a portion of the mainland of Kutch, does mention Kutch State in its heading. The boundary symbol appearing on all three sheets is nowhere explained. "It follows clearly", it was said, "that the Great Rann is not treated as a part of Kutch. . ."

A case was made in this connexion of the fact that on Indian Map B-6 the boundary symbol does not follow the Thalweg of the Khori Creek where the Sind–Kutch boundary is shown on several other maps; it follows the western bank of the Creek. This might indicate that it is rather a district boundary symbol, a symbol separating Sind from the Rann and not from Kutch (Verbatim Records, p. 7285). A further proof for such an interpretation can be found on the combined four atlas sheets that form the Resolution Map, Indian Map B-44. Here it is evident that the two boundaries, the Sind and the Kutch boundary, are shown separately and that the Rann is not included in either of them (Verbatim Records, p. 7291). One more proof for this interpretation was found in a document, the Circular Order No. 27, dealing with boundary symbols. The symbols for State boundaries and those for district boundaries are different, and the symbols on Indian Maps B-4, B-5 and B-6 are definitely district boundary symbols.

India's argument that the yellow riband around the Kutch mainland cannot mean a State boundary because it is to be found also inside territory undoubtedly belonging to Kutch, f.i., south of Banni, was met by pointing to the fact that the purple riband on the opposite side can also be found inside Sind, dividing Sind Districts. There is the same symbol plus a coloured riband along the Rann and inside Sind (Verbatim Records. p. 7301).

On the other hand the reprints of the atlas sheets, Indian Map B-17 and subsequent, show the boundary between Sind and the Rann as a province or State boundary and describe, in their indices, the Rann as a part of Kutch State. The text at the bottom says: with additions and corrections up to such a date. According to Pakistan, what has happened are not additions or corrections. "This is a complete modification, an amendment. Where is the authority for it?. . . This is an achievement of the Department entirely unwarranted by anything. . . Who authorised this change of ribands, the colours, double ribands instead of single riband, who changed the symbol from district symbol into a state symbol?" (Verbatim Records, pp. 7331–32). Unless these questions are answered:

> ". . .this depiction here has no real significance and no evidentiary value. So far as the parties are concerned they have never agreed to this boundary. So far as authority is concerned, there has been never anything of the nature of an authoritative warrant for doing what has been done here". (Verbatim Records, p. 7336.)

Pakistan further pointed to its Maps Nos. 79 and 81 to 85. They are quarter inch sheets too. On Pakistan Map 79, at the bottom, appears the sentence: "Boundaries in this sheet are approximate and not to be taken as authoritative". Besides, some other maps, f.i., Pakistan Map 81, have at the bottom an admini-

strative index where a dot-dot line separates Kutch from the Rann of Kutch. The dates on these maps show that they were prepared earlier than the ones produced by India. They have no province or State boundary symbols or ribands. This is a further proof of the sudden and unwarranted appearance of these symbols in what was wrongly called "reprints".

India returned to the question of the atlas and quarter inch sheets in her reply. (Verbatim Records, pp. 14553–614) and met, first of all, the Pakistani objection about the lack of authority on the part of the Survey of India to put boundary symbols in new editions or reprints of maps.

On this point India produced two original documents. The first was a letter of the Superintendent of the Map Publication Office of the Survey of India to the Secretary of the Government of Bombay, Public Works Department, dated 26 May 1917, which accompanied "rough prints" of several atlas sheets to be published and asked for possible remarks. It said, *i.a.*: "Any changes in boundaries or other additions and corrections may also be shown". The second document was an answer to this letter by the Under-Secretary to the Bombay Government to the writer of the first document saying that the rough prints sent for approval are returned "duly completed". Date: 26 September 1917. In both documents the same atlas sheets are mentioned; among them are 40D, 40L and 40P which correspond to Indian Maps B-17 (40D), B-19 (40L), B-20 (40P) and B-22 (again 40D). The first three are reprints of 1921 and the fourth is a reprint of 1927 (a repetition of Ind. Map B-17). They can, therefore, be considered as expressly authorised by the Government of Bombay in the document submitted. And they all have the boundary symbol and the coloured riband indicated in the legend as "province or state boundary" and Kutch State mentioned both in the heading and in the administrative index.

Thus the reproduced maps followed the general instructions given in the Report of the Indian Survey Committee published in 1905 concerning the continuation of the Indian Atlas Series by replacing old sheets with new ones, called quarter-inch or also degree sheets (because they embrace one degree latitude and one degree longitude). India submitted this Report and quoted from it where it reads: "all boundaries except the common boundary between reserved etc. forests shown on the component sheets will as a general rule, be shown on the quarter-inch sheets".

The corresponding Pakistan Maps 79 and 81–85 were also mentioned by India at this stage. Two points were made. One was that those maps do not show State or province boundaries where there are none, as on Pakistan Map 81, which comes exactly below Indian Map B-18 and is its continuation. While Indian Map B-18, covering the edge of the Rann has a boundary, the lower one Pakistan Map 81, showing a part of the Rann and a part of Kutch mainland, has no boundary symbol, which is in harmony with the Indian position. The inscription on Pakistan Map 79 that "Boundaries in this sheet are approximate and not to be taken as authoritative" is a precaution of the survey which enhances the authority of those maps, the ones submitted by India, where there is no such remark. As to the administrative index where a dotted line separates the mainland of Kutch from the Rann, in Pakistan Map 81, f.i., it can be said that the

time corresponds to boundaries of districts inside a State or province. A similar line separates Karachi collectorate from Hyderabad on Indian Maps B-17 and B-22.

10A. *The 32-Mile Map of India*

The Indian Memorial introduced the second group of compiled maps that proved to be important, by stating in its paragraph 133:

> "In 1914, the Surveyor General of India prepared proofs of the sheets of the Fifth Edition of the 32-mile map of India and Adjacent countries. This Map was in twelve sheets, Sheet No. 5 of which included the areas of Sind and Kutch. These proofs were submitted to the Foreign and Political Department of the Government of India for approval. The Notes exchanged between the Office of the Surveyor General of India and the Foreign and Political Department are at A-30". (i.e., Annexure 30). "The proof copy (B-15) shows the boundary of Sind, which is in pink colour, by the symbol –.–.–. Though exhaustive comments are made on Sheet No. 5 in the Political Department no objection was taken to the depiction of the boundary of Sind by –.–.–. symbol along the northern edge of the Rann, or the pink shade given to Sind up to the northern edge of the Rann... The final issue of the Map, as approved by the Government of India, was published in 1915, reprinted in 1922 and reprinted again in 1928 'with corrections to mark roads and railways only'. Sheets No. 5 and 9 of the 1928 reprint are at B-16."

In paragraph 129 (iv) the same Memorial mentions the Third and Fourth Editions of the same map published in 1898 and 1908 and says that they show "that the Rann of Kutch was included in the territory of Kutch". These editions are reproduced in Indian Maps B-50 and B-51.

The Pakistan Counter-Memorial expressly includes the two maps referred to in paragraph 133 of the Memorial of India in its paragraph 158 as "wrong depictions due to cartographical confusion". The two maps mentioned in paragraph 179 (iv) are, according to paragraph 179 of the Pakistan Counter-Memorial, declared to be "unreliable and unauthorised".

Annex J of the Pakistan Counter-Memorial made several other remarks on Indian Maps B-15 and B-16, namely:

(*a*) That the map submitted as Indian Map B-15 "is not a reproduction of the proof that was submitted to the Government of India" because it has not the markings mentioned in the correspondence relating to this map (Ind. Doc. A-30);

(*b*) The *Handbook of Topography* of 1936, Chapter XI, para. 136, requires that "Changes in other internal boundaries, specially those concerning Indian States, should always be approved by the local Governments concerned": one does not see, in the correspondence, any indication of a reference having been made to the Government of Bombay, the normal channel for relations between the Government of India and the State of Kutch;

(*c*) The colouring of the Rann as approved in item 29 of Indian Document A-30 is consistent with the Rann being a tribal area;

(*d*) On Indian Map B-16 the name "Cutch" is spaced so as to cover only the mainland of Kutch while the name "Rann of Cutch" is spaced separately so as to cover the Rann proper and a part of the lands of the lower delta;

(*e*) "Even if the prevailing confusion in relation to the boundary of Sind was reflected at the highest level, no territory that vested in the British, could be

transferred to anyone else, except by the British Crown acting through competent authority. No such transfer of any portion of the Rann having been effected, notings in internal files" – such as those in Indian Document A-30 – "would be inconsequential and irrelevant".

The same Counter-Memorial in the same Annex referred also to Indian Maps B-50 and B-51 with the following remarks:

(*a*) The use of tints on these maps does not show the Rann of Kutch as a part of Kutch; "on the contrary it clearly shows that the Rann is a marine feature separating the coastal territories of Sind and Kutch";

(*b*) The symbol and the colour riband along the northern edge of the Rann do not correspond to the normal way of depicting State or province boundaries which is used, on the same map, for the boundary separating Sind from Baluchistan; they represent the way of depicting district boundaries used, on the same map, for the line separating districts of Sind;

(*c*) Indian Map B-51 shows "The status of Dera Banni, Chhad bet and the delta lands as a status distinct from the status of the Rann"; they are not covered with the light blue wash that covers the Rann.

For some of the above remarks Pakistan relied on its own map submitted under Pakistan Map 27, "of which B-50 appears to be a subsequent edition".

With the Indian Counter-Memorial a new reproduction of one of the editions of the 32-mile map was submitted under Indian Map BB-3. It is the reproduction of another copy of the Third Edition (1898) and has the following notes on its left-hand edge: "Office copy for colours". "Received signed from Foreign Department 20th February 1901". It has on top of the second note, the signature of H. S. Barnes (Foreign Secretary to the Government of India).

In the text of the Indian Counter-Memorial, paragraph 37, page 22, this new map is added to the previously submitted maps (Ind. Maps B-5, B-6, B-9, B-10, B-11 and Pak. Maps 27 and 32) in favour of the thesis that "though Major Pullan did not show the boundary between Sind and Kutch, it was shown as lying along the northern edge of the Rann in the maps published thereafter by the Survey of India. . .". It was pointed out, on this occasion, that "Indian Map B-16 was formally approved by the Government of India" and that the new map of the same series, Indian Map BB-3, "also had the approval of the Government of India".

The Pakistan Final Memorial referred to the newly submitted map Indian Map BB-3 in its paragraphs 106 and 114 with a similar criticism as with respect to the maps of the same series previously submitted by India, i.e., that it "shows the Rann as a marine feature separating the mainlands of Sind and Kutch", that "the symbol with which the mainland of Sind abutting the Rann is marked, is the same as the symbol on the boundaries that divide different districts of Sind from each other", i.e., a narrow one-colour riband, while the boundaries between Sind and Baluchistan and between Sind and Rajputana are marked with a double coloured riband and that, therefore, map "BB-3 does not show the Rann as a part of Kutch".

The criticism of Pakistan in its Counter-Memorial and its Final Memorial of the Indian propositions on the maps of the 32-mile series was met by India in her opening statement. On this occasion the following points were made (Verbatim Records, pp. 236, 521–531, 926, 1101–11, 1258–61):

(1) In all submitted maps of this series Sind has the pink colour of British India and this colour stops at the northern edge of the Rann; along the same edge a thin red colour riband and a dotted line appear, while there is no such riband and no dotted line between the Kutch mainland and the Rann.

(2) While a similar thin red one-colour riband is used also for internal district boundaries, the outer, thicker and double coloured riband – between Sind on the one hand and Baluchistan and Rajputana on the other – shows the outer boundary of the Bombay Presidency.

(3) Both in the Fourth and Fifth Editions (Ind. Maps B-51, B-15, B-16) the thin red colour-riband with the dotted line on the northern edge of the Rann is reinforced with a thin yellow riband on the Kutch side of the riband; no such riband appears on the northern edge of the mainland by Kutch.

(4) The Rann, nowhere separated from the mainland of Kutch by ribands or other symbols, has on some maps a different tint from Kutch: Kutch has the yellow tint for Indian States, the Rann is blue with a marsh symbol; such is the case on earlier maps, those dated till 1908 (Pak. Maps 27 and 32 and Ind. Maps B-50, B-51 and BB-3), while from that year on the Rann also is coloured yellow (Ind. Map B-16).

The shift from the one colouring to the other is explained by a special decision of the competent authorities. On this and several other points India quoted from a document that accompanied her Memorial, Indian Document A-30 and was entitled "Foreign and Political Department. Notes. Revision of the Map of India, 1″ = 32 miles." It is a compilation of notes dated from 1913 to 1915. The first note, a "Note by the Surveyor General of India", contains a list of remarks concerning the Fourth Edition of the map with three columns: points on which the colouring or boundaries of the next, the Fifth Edition, should differ from those on the Fourth Edition, the Surveyor-General's reasons for the difference and Remarks in the Foreign and Political Department. In this list, under item 29, appears the note (in column 1): "Colouring in Cutch has been changed": (in column 2): "West Rann has been coloured blue and Dry Rann with the land colour (yellow)": (in column 3): "It appears more correct to colour the Dry Rann as a marsh than as a lake and the present colouring may be approved."

India stressed that in this note the Rann is treated as a part of Kutch both in the first column ("colouring in Cutch") and in the decision to colour the Dry Rann in yellow, i.e., the tint for Kutch as an Indian State.

In accordance with the above decision the Fifth Edition, Indian Map B-16, has a yellow wash over the Rann and the blue colour remains only on a few spots in it, indicating that those portions of the Rann do not dry up in the dry season.

(5) "...it cannot be that the boundary resulted from a mistake almost a hundred years ago and that no one noticed it, but just went on copying the mistake, year after year".

To prove this point India mentioned a number of circumstances and, more particularly, the care of the higher authorities for the accuracy of the maps, as documented in the above quoted Indian Document A-30 and the notes on sheets of the submitted maps. It was pointed out that, in the editions before the 1914 Resolution, the Macdonald or Erskine alignment of the boundary was shown, while after this Resolution the correction was accurately introduced. The maps went to the Government for approval. Proof copies were signed by the Foreign and Political Secretary, i.e., a member of the Government of India. The Government co-operated in the preparation of new editions. The same Indian Document A-30 proves with what diligence they co-operated. The document contains not less than 88 remarks of the Surveyor-General and every remark is decided upon by the Foreign and Political Department. Yet the Kutch–Sind boundary; as depicted in the proof copies, is not commented upon, except in respect of the 1914 rectification, which clearly means that it is approved.

In its answer, Pakistan met the above points of India with the following remarks (Verbatim Records, pp. 7436–7530):

(1) The line depicted with dots and a narrow coloured riband that divides Sind from the Rann on all maps till the last, the Fifth Edition, is a district boundary; it is used as a dividing line between Thar Parkar and Hyderabad, Hyderabad and Karachi; that it is only a district boundary is proved by paragraph 5 of the Surveyor-General's letter in Indian Document A-30 submitting the 32-mile map of India for approval, in which he says, *i.a.*: "In compliance with the Map Publication Order No. 39, the rather indistinct dotted boundary used on the 4th edition for district boundaries has been changed throughout on the new map to a fine bar line, which is the symbol used for such boundaries on all our other scale maps." (Verbatim Records, p. 7477.)

(2) The maps abound in inaccuracies and the Survey Department was quite aware of this; one can read in the same Indian Document A-30 that even the Foreign Department was aware of it; its letter in Indian Document A-30 starts by saying that the Department agrees with the publication of an inaccurate map for practical reasons, in order to avoid delay and "other troubles for the Survey Department" (p. 191 of Ind. Doc. A-30). "In other words, the attitude of the Foreign Department is this: we know this map is not quite accurate but the Surveyor-General has engraved it already and rather than delay publication, let this issue go through." (Verbatim Records, p. 7481.)

(3) "Another feather in the cap of the Survey Department" is the fact that Indian Maps B-50 and BB-3, both copies of the same Third Edition do not tally. For instance, "Border Tribes under British control" is mentioned in the table of reference in Indian Map BB-3 but not in Indian Map B-50. "This Department is not very dependable." (Verbatim Records, p. 7511.)

Similarly, the Surveyor-General of India issued in 1891 the Second Edition of the 32-mile map of India, which is Pakistan Map 27, and in 1892, one year later, a 96-mile map of India, the two with a very different alignment of the Sind–Rann border; while the first allotted the Delta lands to the Rand, the

second allotted them to Sind, which again shows "a lack of consistency between different publications of the Survey of India". (Verbatim Records, p. 7517.)

(4) The main question remained open: how did the district boundary symbol along the Sind–Rann border change into a dash-dot-dash State or province boundary symbol in the interval between the Fourth and Fifth Editions, so that the latter edition – as shown in Indian Map B-16 – had this fundamental innovation as compared with all previous editions.

On this point the reasoning submitted by Pakistan was as follows:

(*a*) The Surveyor-General's letter to the Foreign Department in Indian Document A-30 states in its paragraph 2: "The boundaries and system of colouring employed on the 4th Edition were subjected to a close scrutiny by you in 1908; the only changes in the boundaries as shown on the new 5th Edition are such as are due to readjustments of provincial and district boundaries in India and orders which have been issued since the 4th Edition was printed." This clearly shows the awareness of the Surveyor-General that only "authorised and warranted" changes since the previous edition can be depicted in the new one (Verbatim Records, p. 7472);

(*b*) Such a modification was the one that followed the 1914 Resolution; it is said in the Foreign Department note that under orders of 1913 a line slightly to the south of the 24th parallel has now been decided to be the boundary between Sind and Kutch (Verbatim Records, p. 7487);

(*c*) But precisely here we trace one of the events that preceded the publishing of the submitted version of the Fifth Edition, i.e., Indian Map B-16; this permits the construction of the following hypothesis:

> "The proof that was being sent had the purple line. . .marked along the loops, then the straight line; then, from the southward end of the straight line – that is, from the top of Khori Creek – instead of following the Sind coast it followed the middle of the Khori Creek. . . The Foreign Office Comment against this was as follows: 'Under recent arrangements the Khori Creek no longer forms the boundary between Sind and Cutch. Sanction was accorded in November 1913 to the cession to the Cutch State of a tract bounded by the Sir Creek up to a point a little south of the 24th parallel. The new boundary is indicated by a blue line on the proof and is shown in more detail on the tracing below'."

But "the tracing and the proof are not here; so two documents are missing, namely, the document that was submitted, and the tracing on which the correction was more particularly indicated". We have, on the contrary, two later issues of Indian Maps B-15 and B-16, which are the result of the chain of the described events: they have a State or province boundary line. In the light of the foregoing it is permitted to suppose that, while the Surveyor-General informed the Foreign Department that the Sind–Rann boundary had to be corrected in the Khori Creek sector, he got the answer. . . "Never mind the alignment. . .now the question no longer arises because this tract had been ceded to Kutch". Since the Khori Creek portion of the boundary between Sind and the Rann happens to be also the Sind–Kutch boundary, a confusion resulted and maps like Indian Map B-15 could be printed and, in the submission of Pakistan, never sent to the Foreign Office for final approval. "There is no approval of the Foreign Department to B-15".

As Indian Map B-16 is a reprint of the same edition dated 1928, and it does not fully tally with Indian Map B-15 (there is no yellow colour for the Dry Rann in Ind. Map B-15). . ."God alone knows what exactly it was that was printed in 1915". Unless the gaps are filled in regarding the reprinting, one cannot know either "what the authority is for what is shown on B-16" (Verbatim Records, pp. 7506–7).

Besides, Indian Map B-16 applies the instructions on the modification of washes in the Rann, contained in Indian Document A-30, in a very peculiar manner. The instruction was: change the blue into yellow for the Dry Rann. What was done for this map was to change a part of the blue into yellow (on the east side of the boundary) and, simultaneously, to extend the spacing of the letters for "Rann of Kutch" to the portion south of the "blue dotted" line, while the symbol for "runny" soil, thin horizontal dashes, extends across both the vertical and the "blue dotted" line. "The blue line came into existence in 1914 so that a part of the Rann was created in 1914" which is a "remarkable achievement" of cartography, while the new spacing of letters was made "quite without authorisation".

In short, Indian Map B-16 is an "unauthorised map" (Verbatim Records, p. 7506).

(5) As to the approval of the Government, the Government of India was anyhow not competent to approve cession of territory belonging to British India to an Indian State. This could only be done by the Imperial Government. Now, a letter inspected by both delegations, dated 27 September 1893, and relating to the preparation of the Third Edition of the map, proves that incomplete maps were sent to London for approval. Only four sheets of the map in preparation were sent to London, while the map had more sheets. What was sent "were the sheets that contained the external land boundaries of India, and those sheets that did not contain the external boundaries of India were not sent from India to the Secretary of State in England". The sheets sent had the numbers 1, 2, 4 and 6, while the Sind–Kutch boundary appears on Sheet No. 5. This means that the sheet showing the boundary of this case did not go to London and was not approved there. (Verbatim Records, pp. 10182–7.)

India met the above points of Pakistan in its reply (Verbatim Records, pp. 13233–35, 14531–53, 14621–822), with essentially the following propositions:

(1) To start with, India offered a review of editions and reprints of the 32-mile map of India and a review of maps of the different editions and reprints as submitted to the Tribunal. This review read (Verbatim Records, p. 14622):

> "This particular map, the 32 miles to one inch map, went through five editions with reprints. The date of the first edition is not known to us and does not appear from the record. The date of the second edition is known to be 1889; the third edition is dated 1898; the fourth edition is dated 1908; the fifth edition is dated 1915 and reprints of the fifth edition are dated 1922 and 1928. That is the main chronology. However, there are some other items which come in between these dates either by way of proof of the edition to be printed or by way of corrected sheet of an edition already printed. The maps which will be exhibited are as follows: first there is the Pakistan Map 27, which is the 1891 print of the second edition, dated 1889. The second edition was dated 1889, but Pak. Map 27 was printed in 1891; presumably it is a print of that earlier

edition. The third edition is dated 1898, which is Indian Map B-50. After the third edition, the relevant sheet which shows Kutch and Sind, sheet No. 3, was approved with certain corrections by the Foreign Secretary to the Government of India in 1901. That is Indian Map BB-3. Then came the fourth edition of 1908, which is Indian Map B-51. For the fifth edition, that is, 1915, no less than four sets of proofs were sent by the Survey Department to the Government of India. The first set of proofs for the fifth edition was sent in October 1913 and that will be exhibited now. The second set of proofs was sent in July 1914, which is exhibited as Indian Map B-15. The third and fourth sets of proofs are dated April, 1915, and November, 1915 and they are not to be exhibited because they are not relevant. Then came the fifth edition in 1915, which will be exhibited. There was a reprint of the fifth edition in 1922 which will be exhibited. There was also a reprint of the fifth edition in 1928, which is B-16 and is the wall map shown here. That is the last of the 32-miles-to-one-inch map series. It shows the position accurately. We accept it. It shows the line as having been rectified in 1914."

The maps announced here were later exhibited and given the following numbers: the first set of proofs for the Fifth Edition was numbered Indian Map TB-21, the Fifth Edition itself was numbered Indian Map TB-22, and the reprint of the Fifth Edition dated 1922 was numbered Indian Map TB-23.

All maps submitted by India were exhibited (Ind. Maps B-50, B-51, BB-3, B-15, B-16, TB-21, TB-22 and TB-23). The newly submitted ones, TB-21, TB-22 and TB-23, were also made available as photostat copies.

(2) It was pointed out that the producing of the 32-mile maps of India was a "continuous process: as soon as one edition was finished it was made the foundation, the subject matter, the basis for fresh corrections, suggestions, and ultimately a further edition. . .The printed sheets of an earlier edition were used for making corrections, adjustments, and so on for the next edition. . .suggestions are sometimes incorporated in a reprint of the last edition and sometimes they are incorporated in a new edition". (Verbatim Records, p. 14682.)

To illustrate this process and to substantiate a number of propositions on these maps, India produced a number of original documents and made photostat copies of them available to the Tribunal.

(3) The 32-mile maps of India are maps of a particularly high rank. This point is illustrated by the fact that it was on the basis of these maps that special maps were prepared to accompany or to be annexed to the different editions of Aitchison's *Treaties*, i.e., the standard book of international treaties for India, published by the Government of India. This was so from the 1892 edition of Aitchison up to 1927 when it was decided that the next edition, the 1929 edition, could be published without a map because the degree sheets, the continuation of the Atlas of India Sheets, were already available to the Government and the public.

The maps of Aitchison's *Treaties* are also maps on the 32-miles to 1 inch scale and are practically identical to the 32-mile maps of India. The Government of India took part in their preparation. They show, as the 32-mile maps of India do, the Sind–Kutch boundary on the northern edge of the Rann.

Several copies of Aitchison's *Treaties* were exhibited and maps contained in it were inspected by the Tribunal. (Verbatim Records, pp. 14633–73.)

(4) All concerned with the production of this series of maps displayed extreme care and it took years of correspondence between them about previous editions

and proofs of new editions before such new editions were published. A Governor-General and Viceroy of India, Lord Curzon, wrote on 25 May 1900 in a note:

> "To anyone reading for the first time this six-year long argument about the various washes with which we ought to colour what we own, or control, or claim, or would like to own, control or claim, the whole thing has somewhat of the nature of a burlesque. It is too late for me now to intervene. Had I been consulted earlier I would never have allowed the map to come out at all. These colours blending in each other, where we are a little dubious about our position; these lines sharp in one place, and vague in another; these hesitating verdicts as to what is and what is not British territory – are of no good to anyone in the world. They merely cause amusement to our critics, provide weapons for our adversaries, and lay up future political trouble for ourselves. In my judgement it is a mistake to colour these maps at all. Demarcated boundaries can be marked in them by sharply dotted lines: but washes are a delusion and very often a lie. After the six years' labour that has been spent upon this map, I can yet detect inaccuracies in it from my own knowledge.
>
> "However, all this is past and done. I can only express a hope that, whatever may be required for the internal divisions of India, no further coloured map of the boundaries" – that is, the external boundaries – "may be produced. Still more strongly would I lay it down that the Survey Department shall issue no such maps without the recorded sanction and assent of the Foreign Department.
>
> "As regards the Amir, to send the map to him would only convert a burlesque into a tragedy."

But Lord Curzon's suggestion was not accepted. "The maps continued to go out. . ." (Verbatim Records, pp. 14723–4.) Though Lord Curzon noted that "no further coloured map of the boundaries may be produced", he agreed after further discussion with the Foreign Secretary that British India and country under British administration might be coloured pink and Indian States yellow (Verbatim Records, p. 14731).

(5) This category of maps had at the bottom the inscription "published under the direction of so and so, Surveyor General of India", which publicly engaged the authority of the Surveyor-General and his Office. But in reality there was much more to it. Since they depicted with washes and boundary symbols and ribands the political and administrative structure of the sub-continent, the issuing of these maps was considered and treated as a kind of act of Government. A particular and well defined procedure was instituted and strictly followed. The main idea of this procedure was that the Government of India and the Imperial Government in London co-operated in the preparation of the maps and that the maps were not published unless the sanction of these two Governments was obtained. It followed that, once published, these maps engaged the authority of both the Government of India and the Imperial Government.

Details of the procedure could be followed in the documents submitted to the Tribunal on this occasion. The essential features of the procedure, as documented, were the following. After the issue of an edition of the 32-mile map of India, the Surveyor-General started collecting critical remarks and information affecting the preparation of the next edition. After a certain time he prepared proof copies that incorporated the remarks and new information. At a given moment he sent a compilation of remarks with such proof copies to the Foreign and Political Department of the Government of India. From there the papers went to the Home Department and the Railway Department. From these Departments

they came back to the Political Department and were then sent to the Surveyor-General with remarks of the three departments. The Surveyor-General, thereafter, incorporated the remarks thus gathered in the map under scrutiny and prepared a new set of proofs. These went up and down again, a second time, and then a third time, and a fourth time. When the publication of a new edition approached, a complete set of proofs in ten copies was sent to the Secretary of State for India in London. He also made remarks that had to be incorporated. New proofs were produced and sent to London. Only when the final approval was received from London, the Surveyor-General's office published a new edition.

Two points in this procedure required particularly to be clarified.

One: to what extent did lower authorities, i.e., lower than the Departments of the Government of India, co-operate in the preparation of these maps? It was submitted, and proven by documents, that "corrections were invited from different quarters, including Provinces", while these invited corrections from such civil servants as Commissioners, like the Commissioners in Sind. Although the Commissioner in Sind pointed out changes in the internal boundaries, he made no comment on the Sind–Kutch boundary. (Verbatim Records, p. 14632.)

Two: was the approval of the Secretary of State in London confined to the approval of external boundaries of India or not?

This point was controversial. Pakistan asserted, with reference to the period between the Second Edition, in 1889, and the Third, in 1898, that out of the several sheets of the next edition only such sheets were sent to London as showed external boundaries. All the editions, up to the Fifth, which was the last (1915), had six sheets, the Fifth Edition had twelve. It followed from the submitted correspondence that complete sets of six sheets of the published Second Edition and complete sets of proof sheets for the next, the Third Edition, were sent to London in ten copies.

What turned out to have induced Pakistan into error was the fact that at one point in 1893 only four out of six sheets for the Third Editions under preparation were sent to London and that those sheets showed external regions of the sub-continent. The complete correspondence, now submitted by India, established the following detail of the procedure. First all six sheets were sent to London. The Secretary of State's office made critical remarks about four of them, while approving the remaining two. Thereafter the four sheets to be corrected were corrected by the Surveyor-General and "a fresh set of proofs" of these four sheets were sent to London. It so happened that they were external sheets (Verbatim Records, pp. 14531–53 and 14631–704.)

(6) The last, the Fifth Edition, was presented with particular abundance of information and documentation because of the particular significance attributed to it.

With reference to this point new maps were exhibited in original and photostats submitted, so as to complete the illustration of the process of preparation for this edition with maps.

The new map numbered Indian Map TB-21 is a copy of the first set of proofs for the edition. It has at its top the inscription made by hand with ink "1st Set

of Coloured Copies Submitted to Government for approval of colours and boundaries". In a different handwriting it has a number of remarks, two of which concern Kutch. One reads: "Bhuj should not be red" (a British cantonment). The second reads: "Boundary had been altered in...1913...New boundary is along blue line...pencil on uncoloured copy. Colour accordingly." This remark is connected with a circle around the area of the Khori Creek, embracing the portion of the boundary along this creek and the lower part of the "vertical line". It was said that these were the remarks of the Foreign and Political Department.

The previously submitted Indian Map B-15 was brought to the attention of the Tribunal again and an original of it was submitted. It was said that it was the illustration of the next phase of preparations. It has the inscription (by hand in ink): "2nd Set of coloured copies submitted to Government for approval of colours and boundaries". It has again some remarks in handwriting, one of which concerns Khairpur. The boundary along the Khori Creek was altered to the 1914 alignment. The blue wash over the Rann was reduced to a few spots. The rest of the Rann appears white as the mainland of Kutch.

The new Indian Map TB-22 was the final form of the Fifth Edition. It was exhibited and photostat copies were submitted. The map has the 1914 alignment of the border and the Rann has a yellow wash, like the mainland of Kutch, with the exception of a few spots.

The new Indian Map TB-23, being a reprint of the same edition, dated 1922, has physical features of India, without washes over administrative units but with boundary symbols. It has a dash-dot-dash boundary symbol along the 1914 line and the northern edge of the Rann (same alignment as Ind. Map TB-22).

The previously submitted map, Indian Map B-16, represented the last, the 1928, reprint of the same last edition of the map and was pointed to by India as the most important cartographical document of this category. An original copy of it was exhibited on the wall of the Tribunal's meeting hall during the last few weeks of this, second, oral statement of India. It was abundantly commented upon.

It was pointed out that the Fifth Edition of the 32-mile map of India is different from previous editions in more than one respect:

(*a*) It has a double-coloured riband and a dash-dot-dash symbol all along the Kutch–Sind boundary from the mouth of the Sir Creek in the West to the north-eastern trijunction in the east (1914 rectification);

(*b*) The Rann is coloured yellow like the mainland of Kutch (with the exception of a few spots);

(*c*) The second loop in the Badin Taluka sector is corrected as a result of Erskine's Survey;

(*d*) The boundary along Mithi Taluka is fairly straight and does not go along the inlets of that area;

(*e*) It contains the alignment of the Jadhpur boundary as agreed by the Parties.

(7) The conclusions drawn by India from all the submitted documents and maps were summarised in the following five points:

(*a*) The 32-mile map of India is the authority for the definition of the area of British territory;

(*b*) This map, "minutely examined and scrutinised by the Government of India and the Secretary of State", shows the Sind boundary along the northern edge of the Rann;

(*c*) The boundary between Sind and Kutch is shown as conterminous;

(*d*) The Rann is shown as a swamp or marsh belonging to Kutch;

(*e*) Any ambiguity on the last two points was cleared beyond doubt by the Fifth Edition of the map, as shown in its original form of 1915 on Indian Map TB-22 and in its last reprint, the reprint of 1928, on Indian Map B-16.

Finally, it was said that the last, the Fifth Edition, acquired a particular significance by the "historical proximity to the most decisive events" of the present case.

> "First, the 1915 edition, the fifth edition, which came on the heels of the 1914 Resolution. In 1913–14 you have this dispute between Kutch and the British Government. That dispute is resolved. Almost immediately after that comes the fifth edition in 1915, and it shows the Sind/Kutch conterminous boundary as it is shown in the Resolution Map, B.44, and the purple line is the conterminous boundary, as we have submitted. Likewise you see the proximity of the very last 32-mile publication, namely the 1928 reprint to the creation of the province of Sind. The difference here is longer, not over-long – it is seven years. After seven years, when Sind is created into a province, it is this boundary shown on B.16 which becomes the boundary of the Province of Sind and it is this boundary which is reproduced on the Index Map, which is Indian Map B.45." (Verbatim Records, p. 14822.)

CHAPTER VI: THE ISSUE OF RIGHTS IN PARTS OF THE RANN

In this Chapter the evidence relating to rights in some parts of the Rann has been summarised and the position of the Parties in respect of that evidence and the conclusions to be drawn from it has been stated.

The position of Pakistan is that the evidence produced proves that factual enquiries into the existing state of rights in the Rann or over bets invariably revealed that they were divided along a line midway between opposite shores, showing the pre-existence of a regional custom to that effect; that the decisions in all previous disputes between coastal States in respect of their rights in the Rann accorded with the division of rights half and half across, and serve as precedents; and that several maps and reports show that parts of the Rann belong to other Indian States than Kutch.

The position of India is that the evidence produced proves that in all cases the enquiries were about facts and the decisions were based on facts, and that no general rule or regional custom ever existed or was applied to boundary issues concerning the Rann or bets in the Rann and that the submitted maps and reports do not contradict that the Rann, by and large, belongs to Kutch.

1. *The Enquiry of Miles (1823)*

In 1822, the Government of Bombay was contemplating the adoption of certain measures for the prevention of illicit trade in opium. Engagements were entered into with the subordinate chiefs in the area under British influence in Gujarat and Kathiawar along the eastern and southern edges of the Rann of Kutch, whereby preventive customs arrangements were made. Since a portion of goods seized in the anti-smuggling operations was to be awarded to the chiefs in whose territory the seizure took place, the question of jurisdiction over the islands in the Rann arose. Major Miles was, therefore, called upon to "ascertain whether the Islands in the Run. . .belong to any and what Chief". (Pak. Doc. B.295.)

Miles thereafter prepared a detailed "list and description of the Bates or Islands in the Eastern or lesser Run, with the names of the Talookas on which they depend". (Ind. Doc. A-87.) This list is produced by India to show that some bets in the north-eastern Rann depended on Wav while some other bets, including the Nara Bet chain, depended on Suigam. Pakistan, however, uses the list to argue that it supports Pakistan's plea that the bets in the Rann were governed by the principle of "nearness of shore". In the submission of Pakistan, of the 55 islands described by Miles, only those closest to the Kutch coast are stated to belong to Kutch, while those nearest to the Gujarat and Kathiawar coasts are stated to belong to the various States concerned. Pakistan argues, therefore, that, traditionally, the rights of the coastal States in the Rann have extended equidistant from their respective shores, and the islands in the Rann

have belonged to the coast to which they are nearest. The Report of Miles is relied upon by Pakistan to demonstrate that the whole of the Rann of Kutch did not belong to Kutch and to illustrate that the bets in the Rann were divided between the coastal territories according to their accessibility from the shore, which in practically all cases meant nearness of shores. Pakistan further submits that this criterion was based upon custom and usage.

There is an issue between the Parties as to whether the enquiry of Miles related to sovereign rights, proprietary rights or some other kinds of rights. India originally took the position that Miles did not describe these islands as "belonging" to the respective chiefs, but rather as "depending" on them. Pakistan pointed out, from the text, that Miles had used the two expressions interchangeably, and that the word "belongs" was used more often than the word "depends". In its second oral argument, India described this controversy as being "immaterial".

Pakistan argues that Miles made an enquiry about sovereign rights and that his findings on the division of the bets implied that the bets formed part of the territory of the respective States. As soon as someone in Palanpur, Santalpur or Radhanpur is found to be the chief of an island, the title of Kutch to the whole Rann is negatived. The enquiry of Miles demonstrated, in 1823, not only that the claimed title of Kutch was not known, but that it was disproved.

> ". . .[in] this area the difficult problem of distinguishing between the shading off of proprietary rights into sovereign rights as such has been commented on by Tupper. . . The position is that if you go splitting sovereignty into fragments, the smaller fragments that are left in the end are so devoid and deprived of the. . . trappings of sovereignty and the wherewithal that when each sovereignty is exercised it becomes almost impossible to give any substance to the sovereignty content of it. . . On analysis what is found there as an ingredient is sovereignty. . . These are fragments of sovereignty and that is. . .[Pakistan's] submission on the point. The enquiry with reference to the islands was an enquiry with reference to sovereignty." (Verbatim Records, pp. 16236–7.)

On the other hand, India argues that the enquiry of Miles did not relate to the matter of ownership of the bets at all, but rather to dependence for certain purposes of law and order. India points out that in the description of Miles, the same bets are said to "depend" upon one chief and to "belong" to another. Counsel for India comments:

> ". . .I am unable to make any positive statement as to what is the meaning to be attached to the words 'depends on'. Someone may have construed it as ownership consequently. That I cannot say, but it would appear from the general tenor of the whole thing, that of a bet depending on villages, means perhaps that they derived supplies from there in particular times or that those villagers were the persons who utilised those bets for grazing or for cutting grass." (Verbatim Records, pp. 12681–2.)
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> "It seems to signify some kind of convenience, some kind of nexus which is of administration, of supplies or something of that kind, because it does not purport to divide it between States or the Chiefs to whom it belongs, but between the talukas." (Verbatim Records, p. 12663.)
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> ". . .it seems to draw a distinction between dependence generally and the immediacy of a dependence." (Verbatim Records, p. 12662.)
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> "It [Keniteeo Bate] is listed as dependent on Wav, or rather the general heading is 'Bates or Islands depending on the Vauw Talooka'. . .It [Bhoytra] is in Jodhpur. . .I do not know if it is supposed to belong to Wav and be dependent upon Bhoyatra, or whether it belongs to Bhoyatra and is dependent on Wav." (Verbatim Records, p. 12663.)

"...although the word 'ownership' is used, 'belongs' is used, there is some implication of the words 'immediately depending upon'...you say it immediately depends, in one place, on that other bet, Gujetio Bet, on Wav, and you go on to say it depends on that town in Jodhpur itself." (Verbatim Records, p. 12671.)

"...in one place there is a reference to a State – then if it was a question of ownership, then obviously one could not say that in one place it depends on so-and-so and in another place it depends on someone else which is a different State." (Verbatim Records, p. 12681.)

"...something belongs to Modotra, something else depends on Modotra and it is all headed 'depending on Chorаur'...it is not possible to arrive at any conclusion as to what the writer had in mind." (Verbatim Records, p. 12692.)

"...though it [Dhussi Bate] is dependent on Chorаur it belongs to Pipralla." (Verbatim Records, p. 12692.)

" Now the heading [for Poong Bet] is 'Depending on Warye' and then it says 'depends on Vaddear, Chorаur, Wagur and Warye'." (Verbatim Records, p. 12692.)

India also argues that the Report of Miles is a historical document showing the position in 1823; that position did not continue. Furthermore, insofar as this Report relates to the rights of coastal States other than Sind, it is irrelevant. What is relevant is only whether Sind controlled any of the bets. Finally, India argues that the Report of Miles is not based on any existing or deducible principle, but on evidence collected on a question of fact. India concludes:

"...[There] is no principle, legal principle, custom principle, that because...an island is nearer to this place than to that, therefore it must be deemed to belong to the nearer one. We must distinguish any principle of that kind from what may naturally happen, which is that in the course of history it is highly probable that the nearer State will occupy the island...But can you deduce a principle?...There is no legal principle or custom attached to it. This report does not demonstrate any custom of the kind." (Verbatim Records, pp. 12661–2.)

Pakistan says that with the solitary exception of the Nara Bet chain of islands, every single island was found to be on the appropriate side of the median line. As regards the Nara Bet chain, Pakistan submits that Miles regarded the whole chain as a single island; that his opportunities of ascertaining Sind rights were limited; if the people from Suigam said that they had rights in the entire chain and the people from Sind were not there because they belonged to a foreign country, the whole chain might get included without further investigation. Pakistan contends that the evidence of Burnes (Ind. Doc. A-6) was available to show that the correct position in regard to the chain of islands was, in fact, different.

2. *The Keswala Bet Decision (1860)*

Keswala Bet is an islet in the Little Rann situated about midway between Kutch and Kathiawar. It was claimed by two villages of the Kutch State (Palanswa and Kunmeer) as well as by the village of Ghanteela in the Morvi State and by the village of Teekur in the Dhrangadhra State. In 1856, Colonel Jacob gave a report on the dispute (Ind. Doc. TA 26) recommending that the claims of Ghanteela (Morvi) and Kunmeer (Kutch) should be rejected, and that the islet should be divided into two parts, the part north and west of the junction of the Teekur and Ghanteela road to be assigned to Palanswa and the part south and east to Teekur – leaving it still open to either Kunmeer or Ghanteela to bring forward fresh evidence for consideration in support of their right to cut grass

on it. Thereafter, the Government of Bombay issued a Resolution in 1860 directing that the islet should be so divided (Pak. Doc. A.6).

Pakistan argues that the Keswala Decision shows that the rights of the coastal States in the Rann extend equidistant from their shores. This Decision was also cited as a precedent for the division of rights in the Rann by Mr. Peile in 1876 (Pak. Doc. B282, paras. 27 and 34), as well as by Kennedy in 1898 (Pak. Book 67/2, pp. 8–9). Pakistan also submits that the Keswala Decision concerned an issue of sovereignty. The Bombay Government was competent to decide this issue since, in a division of territories between two Indian States, there was no formal direction that the Secretary of State must give his consent.

India states that the division of the Keswala Bet was recommended by Colonel Jacob and accepted by the Government on factual investigation and not on any principle that a bet in the Rann should be divided between the States lying on either side of the Rann, and that it is significant to observed that the claim of the Morvi State was totally rejected. According to India, a detailed enquiry and a detailed inspection were made and no principles of the median line or nearness of shores were invoked by the States concerned in this dispute, nor do any such principles emerge from the Decision. India also argues that the division of Keswala could have been two-thirds and one-third and not necessarily half and half, had the evidence so justified it. If the dispute were to have been decided by recourse to some principle, it would not have been necessary to examine much evidence, as was done by Jacob. India denies that the Decision gives rise to any principle and argues that it does not follow from the Decision that in regard to other bets in the Rann, no enquiry need be made. At the same time, India also argues that the Keswala Decision is a kind of "Solomon's judgement":

> "One may ask what principle Solomon did establish. It was only this: that if there is a contest, then, bar any overwhelming evidence on one side. . .there is an indefiniteness about this, each side denies the other's claim. . .it will be divided half and half. Is that a principle, or is it simply the obvious practical way out of an indefinite situation?" (Verbatim Records, pp. 12523–4.)
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> "Those are no principles, they are adjudications according to the particular situation at the time. He does not say he acts on any principle. . ." (Verbatim Records, pp. 1252–4.)

Counsel for India continues:

> "It seems to have been a question of cutting grass. . .Certain claims were made which were not very definite; in that state of affairs Colonel Jacob thought that one person had had some use of it and the other had had some use of it. Therefore they each ought to have a share. A certain person had made no claim at the moment but he would leave it open to him to make a claim later on if he thought fit. Therefore in his opinion the right thing to do was to divide it half and half. The question I would ask is, what principle arises from it?" (Verbatim Records, p. 12523.)
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> "In the first place, nothing is said about a principle as having been an existing principle before, nor is it stated in the broad way. . .All that is done is to say that here are people who have had and claim certain rights in this bet, in my opinion the proper way is to divide it half and half. It is an adjudication, it is a division, but it is not based on any principle that wherever there are two persons claiming it must be divided half and half, because that is a rule or, as has been put, a local custom, a custom of the Rann." (Verbatim Records, p. 12552.)

In its final argument, Pakistan points out that whenever an investigation has taken place of the rights of the Rann, it has been found, as in the Keswala

Decision, that the rights of the coastal States extend equidistant from their shores. Pakistan agrees that Jacob made a factual enquiry, but argues that such is the compulsion of the nature of this area that the existing position will be found on enquiry to conform to the concept of nearness of shores and equidistant rights. In rejecting the claim of Morvi, Jacob found the correct position, namely, that Keswala Bet was nearest to the Kutch and Dhrangadhra shores. Pakistan concludes, therefore:

> "...'such use as these islands are capable of is made by the inhabitants of the shores to which it is nearest...' This pattern is found as an existing fact. Each time it gets investigated. So, here too, what has been found as a fact conforms to it: Palanswa, Tikar. And that is where the division has ultimately taken place." (Verbatim Records, p. 16482.)

Certain other observations were made by Jacob in his Report on the Keswala Bet dispute. He noted that the islet appeared to have originally belonged to Palanswa (Kutch) insofar as temporary occupation by bodies of marauders could constitute a title. But as this state of things terminated with the British invasion of Kutch, no one could be said to have been the proprietor during the year (1819) when Kutch was given a guarantee by the British of the integrity of its dominions. Jacob also noted that only in the previous few years had Palanswa (Kutch) and Teekur (Dhrangadhra) established proof of proprietary right by the levy of grazing tax.

India states that if Jacob's findings could have the consequence that in 1819 Keswala was no man's land, then the enquiry would be as to who became the owner subsequently, by possession, occupation or by exercise of authority. According to India, Kutch subsequently appears to have acquired Keswala again by exercising grazing rights. In Pakistan's view, this Indian submission is inconsistent with India's own pleading that Kutch did not increase after 1819.

Pakistan also points out that there is evidence that a portion of the Rann belonged to Dhrangadhra (Ind. Doc. TC 1, Pak. Doc. B.216) and that India has conceded as much.

3. *The Poong Bet Decision (1867)*

Poong Bet is an island in the Little Rann, about 14 miles in length and four miles in breadth. It lies closest to the coasts of Wagur in Kutch and Vahari in Palanpur, rather nearer Vahari than Wagur. By a Resolution of the Government of Bombay in 1867 (Pak. Doc. B.266), which received the approval of the Secretary of State (Pak. Doc. B.266/1), this island was divided into two equal portions between Kutch and Palanpur.

Poong had been claimed by the Girassias of Nanda and the Chief of Adeysir, in the Kutch Political Agency, and the Nawab of Radhanpur, the Mulliks of Varhari and the Jaregas of Piprala in the Palanpur Political Superintendency. In 1851, there was a violent clash between armed parties from Piprala (Palanpur) and Nanda (Kutch). Nanda had been charging a tax on the graziers of Piprala who used to travel to Poong via Nanda. When an attempt was made by the Piprala graziers to by-pass Nanda and adopt a new route via Akoria Bet, there was friction. The Nanda claim was that Piprala had no right to open a new route, and

in any event, even the new route while by-passing Nanda still joined the old route south of Nanda.

There was a long exchange of correspondence between the Political Agent, Kutch, and the Political Superintendent, Palanpur, on the merits of the claims of the various claimants. The Political Superintendent, Palanpur, had supposed that Kutch was laying claim to the whole island of Poong and on that supposition was strenuously contesting the supposed claim of Kutch, believing that the rights of Vahari were being denied. In the course of the correspondence, the Political Agent, Kutch, in one of his letters to the Political Superintendent, Palanpur, observed that he was "not aware of His Highness [The Rao of Kutch] having claimed exclusive sovereignty over the Poong". To this the Political Superintendent, Palanpur, replied:

> "I entirely agree with you that the rights of the Poong may be left to usage, and I should have never entered so much at length into the business, had I not supposed, that the Rao wished to assume the exclusive sovereignty over the Poong and to question the right of Warahee hereto. . .". (Pak. Doc. B-265/I.)

Finally, the Political Agent, Kutch, reported to the Government through the Political Superintendent, Palanpur, stating, *i.a.*, that "the officers by whom the case has been sifted, seem to have come to the conclusion that the best claims had been made out by Nanda (Kutch) and Warye (Palanpoor) and that their rights were pretty equally balanced. . .". (Pak. Doc. B.265.)

These officers suggested two alternative courses for settlement of the case, namely, to define the limits of each claimant or to put a stop to the levy of taxes and throw the bet open to all. The Political Agency was averse to the second course as it left the dispute in the same unsatisfactory state and, in a letter to the Government of Bombay dated 24 December 1866, proposed to set the question at rest "by defining the rights of each party beginning by separating the Kutch claim and all it includes, from the Palanpoor claim and its subordinate claimants, which can be decided on and settled in detail by the local jurisdiction in each case afterwards". (Pak. Doc. B.265.) Stating that "the Agents both here [at Kutch] and at Palanpoor who discussed the case. . .appear to have considered the Kutch and Palanpoor claims equal, and on this principle to have divided the proceeds of the attached grazing tax between the two sides of the Runn", the Political Agent proposed that "officers from each Agency should meet when convenient and divide the island into two equal portions as may lie most convenient to the approaches from the two sides. . ." and, "this being done, the subordinate claims of Nanda and Adeysir can be gone into and decided on by His Highness the Rao with my assistance, and those of Radanpoor, Warye and Peepralla by the Political Superintendent at Palanpoor". (Pak. Doc. B.265.)

The Political Superintendent, Palanpur, agreed to the proposal made by the Political Agent, Kutch, whereupon the Government of Bombay passed a Resolution directing that effect should be given to the decision by laying down boundary marks along the line of division (Pak. Doc. B.266). The Secretary of State described the proposal to carry out the decision as "a very proper one" and that it had rightly received the approval of the Government of Bombay.

(Pak. Doc. B.266/1.) In submitting the Kutch Administration Report for the year 1875–76 the Political Agent, Kutch, observed:

> "On the Palanpur side, the division of the Poong island in the Runn between Warye, under that Superintendency, and Cutch, has been at last carried out but under circumstances which, I fear, may necessitate a fresh reference to Government." (Pak. Doc. B.213.)

It may be mentioned that in the course of the correspondence between the Political Agent, Kutch, and the Political Superintendent, Palanpur, a reference was made to the Report of Miles prepared in 1823 (Ind. Doc. A-87).

According to Pakistan, the considerations in the Poong Decision were nearness of shores, accessibility and usage.

In Pakistan's submission, it is clear from the recommendation made by the Political Agent, Kutch, to the Government of Bombay in his letter of 24 December 1866, quoted above, that the principle is to divide Poong between the two sides of the Rann, and that inevitably spells out the principle of nearness of shore. Pakistan concludes:

> "So we see how these islands in the Rann are stated to belong to one side or the other. It is. . .[Pakistan's] submission that they belong to the shore to which they. . . are nearest, modified sometimes by accessibility, and usage as we see from this Poong Island case, plays an important part." (Verbatim Records, p. 3721.)

India argues, on the other hand, that in the Poong dispute rival claims were factually examined, evidence was collected, merits were gone into, and the resultant division was by reason of what had been found on a question of fact and not by following any principle. India also points out that, on scrutiny, some of the claims were eliminated. Various solutions had been considered, including one that the island should be thrown open to everyone, but it was finally thought that the best thing would be to divide the bet itself. The principle of nearness of shores never came up. If there was a well known principle to divide everything half and half between the two States, it would not have been necessary to go into a lengthy discussion of the merits. India sums up its position as follows:

> "Several claims there were, some were eliminated and some are subsidiary claims falling under Kutch on the one side and 'Warye, Palunpoor' on the other side. Therefore, the best way to do it is to divide it into two because the claims of both those parties appear to be of equal merit. Because they are of equal merit the division is equal, not because there is some extraneous principle which compels you to divide it in the middle whatever the merits of the case may be. It may be that one side has no merits at all, in which case there would be no question of a division. . .Both sides may have an equal claim therefore it will be divided half and half. It is commonsense and it is logical but it is no principle. I submit that has been established and it is no instance which contributes to the formation of a custom." (Verbatim Records, p. 12583.)

In its final reply, Pakistan notes that the Parties share a certain amount of common ground:

> "My learned friend in his reply has made the point that this [Poong] is a factural inquiry. I accept that. This is my point. You have to find what is the existing position...." (Verbatim Records, p. 16521.)

Pakistan also argues that the first issue decided in the Poong case was the sovereignty question between the two coasts, and then the subordinate claims of each side were to be sorted out. It was not as if there were two parties left by elimination, as India appears to suggest.

In another context, Pakistan relies on the Poong Decision as demonstrating that usage and exercise of jurisdiction have been upheld as bases for establishing rights in the Rann.

4. *The Nara Bet Decision (1897)*

The Nara Bet is one of a chain of islands in the north-eastern part of the Great Rann, lying between Nagar Parkar in Sind and Suigam in Palanpur. The two largest islands in the chain are Nara Bet and Parpatano Bet which lie closer to the Palanpur coast, whereas Bordia Bet, Dhan Bet, Sosal Bet and Salia Chowki Bet lie closer to the Sind coast.

India recalls that this chain of bets was described by Miles as all depending upon Suigam and that he observed that all the bets in the chain might be considered as portions of Nara Bet but that, as they were separated by small strips of the Rann, they went under different denominations.

The British had maintained a police post at Nara Bet since before the conquest of Sind in 1843. About 1893, the Thakores (chiefs) of Suigam claimed ownership of Nara Bet, and made a move for the withdrawal of the Sind police post there on the ground that the bets belonged to Suigam. The matter was examined by the Sind officials. The Mukhtiarkar of Nagar Parkar reported in 1893 that Nara Bet was not within the limits of the Thar Parkar District but that five bets to its north, namely, Buriryo (Bordia) Bet, Dhan Bets (large and small), Salia Chowki Bet and Sosal Bet were supposed to be within the boundary of Thar Parkar District, and that the district boundary was said to extend up to the Sosal or Salia Chowki Bets (Pak. File 3, item (a)).

The Commissioner in Sind was of the view that there were no grounds for assuming that the bets in question did not belong to Thar Parkar District, to which they were nearer than to Palanpur (Pak. File 3, item (b)). The Political Agent, Kutch, was contacted in the search of old records, since Thar Parkar had been administered by his office from 1844 to 1856. The Political Agent, Kutch, reported that no records were available with him, and also drew attention to the 1885 Resolutions wherein the Government of Bombay had advised that the boundary question in the Rann should not be raised (Pak. Doc. B.284). The Commissioner in Sind thereafter (Pak. Doc. B.259) advised the Deputy Commissioner, Thar Parkar, that the British Government by its police post was the only power that had exercised permanent dominion on the bets, and that he should consider the group of bets as belonging to the British Government on the principle stated in 1885 by Watson that the grazing lands or islands beyond the mainland had been treated as belonging to the side to which they were nearest (Pak. Doc. B.9). The Deputy Commissioner, Thar Parkar, then wrote to the Political Superintendent, Palanpur, opposing any change in the *status quo*, and suggested that the Thakores of Suigam should be warned against any attempt as such. He added:

> "It is a matter of common occurrence, as you are well aware, for native chiefs insidiously to encroach on tracts to which the British Government pays little attention and, after a lapse of time, to claim them..." (Pak. File 3, item (c).)

The Political Superintendent, Palanpur, replied that it was "beyond dispute that the Naro Beyt actually belongs to the Thakores of Suigam". He saw no

cause for apprehension for public safety in the substitution of a Thar Parkar police post by a Palanpur Superintendency post since the Supterintendency limits were guarded by Imperial police and the Thar Parkar police would be replaced by these latter who were under the direct control and supervision of the Palanpur District Superintendent of Police (Pak. File 3, item (d)). The Commissioner advised the Deputy Commissioner to inform the Political Superintendent, Palanpur, that the Commissioner was unaware of the grounds on which the Political Superintendent adopted this position and that he would like to be favoured with the evidence on which the claim of the Thakores of Suigam was based and further that there was every reason for the Commissioner to think that Nara Bet belonged to the British Government to whose territory it was much nearer than to that of the Thakores of Suigam. (Pak. File 3, item (e).)

The Commissioner in Sind then took up the question with the Government of Bombay (Pak, File 3, item (f)). He said:

> "Geographically Naro Beyt would seem to belong to the Thar and Parkar District, as [the Deputy Commissioner] reports a chain of islands to run out to it from the British side. . .and it is much nearer to the Thar and Parkar District than to the confines of the Palanpur Superintendency. . .The islands between Naro Beyt and the Parkar frontier are admittedly British. . .".

[The Commissioner's assumptions as to distances were not quite accurate.]

The Commissioner also observed:

> "For the first 40 years of the century, in fact, anarchy prevailed in this remote part of the country and the beyt was in 'no man's land'. So no doubt the Thakurs on either side of the Runn occupied or claimed it, according as they had the power or the inclination. . .".

But, the Commissioner conceded, there was also evidence in support of Suigam which showed that the Thakores had claimed Nara Bet in 1828, and in 1859 it was spoken of as the extreme limit of the Political Superintendent of Palanpur. The Commissioner also stated that he had no objection to the withdrawal of the Sind police post at Nara Bet, as, in his opinion, it was only put there to protect postal lines.

The Political Superintendent, Palanpur, commenting on the above letter, stated that the description of the bet given by the Commissioner in Sind was generally accurate, but the distances given by him were not. "The beyt is nearer to the limits of this Superintendency than it is to the confines of the District of Parkar" (Pak. File 3, item (g)). The Political Superintendent also stated that Suigam claimed that all the bets between Nara Bet and Parkar belonged to it.

The precise terms which the Commissioner in Sind thought should be laid down were:

> "(e) That the Thakors have no claim to the Beyts lying between Naro Beyt and Parkar." (Ind. Doc. A-88, p. 159.)

Shortly afterwards, the Acting Commissioner summarised the position of Sind as follows:

> "There appears to be no objection on the part of the Sind authorities to withdrawal of the Police Post but it should be withdrawn. . .without prejudice to any rights, territorial or otherwise, which the British Government may have. . .It is easy to conceive that like stepping stones across a river one side may be more interested in maintaining the

crossing and so the control of these 'beyts' may belong to Suigam. . . without furnishing any claim whatever over the Runn. The Runn at this part may or may not be important in the future but the Acting Commissioner believes that the Bombay Salt Department have collected a good deal of evidence adverse to the supposition that the Runn can be claimed by Suigam or any other riparian owner. . .". (Pak. Doc. B.313.)

The views of the Revenue Department and of the Collector of Salt Revenue as well as of the Commissioner of Customs, Salt, Opium and Abkari were obtained. (Ind. Doc. A-88.)

The Nara Bet dispute was finally settled by a Resolution of the Bombay Government in 1897 (Ind. Doc. A-88). The Resolution stated:

"On a consideration of these papers His Excellency the Governor in Council is of opinion, firstly, that there is no evidence that the Naro and Parbutano Beyts ever formed part of the British district of Thar and Parkar and, secondly, that the proprietary rights therein vest in the Suigam Thakors. These Thakors are non-jurisdictional Jaghirdars of the Palanpur Superintendency. . . It appears to have been the understanding of the Political Superintendent, Palanpur, that these possessions of the Thakors were also within the sphere of his jurisdiction and to that arrangement the Commissioner in Sind sees no objection.

"It is, in consideration of proximity and of the fact that the land of the Beyts belong to the Suigam Thakors, clearly most convenient that the jurisdiction should be exercised by the Political Superintendent, Palanpur, rather than by the Sind authorities. . . That should therefore be the position and the post of Thar and Parkar Police may be withdrawn. . .

"2. The question of taking certain agreements from the Thakors has been discussed. In view of the exercise of authority during the past sixty years, and of Imperial rights and interests, His Excellency the Governor in Council considers it inexpedient to enter into any agreement with the Thakors of Suigam which would imply a recognition of jurisdictory title on their part over islands in the Runn. . .". (Ind. Doc. A-88, pp. 159–60.)

Pakistan states that the Resolution is confined only to Nara and Parpatana Bets, and that the boundary as drawn on the Claim Map of Pakistan, which runs between the Parpatana and Kakaria Bets, is strictly in accordance with the Resolution. If a median line is drawn between the coasts of Palanpur and Parkar, Nara Bet and Parpatana Bet fall on the Palanpur side of that median line, and the remaining bets, claimed by the Commissioner in Sind, fall on the Parkar side of that line.

To this, India replies that, in the correspondence preceding this Resolution, the Sind authorities had stated that all the bets between Nara Bet and Parkar were British, while the Thakores of Suigam had maintained that said bets belonged to them. However, the Resolution disposed of the territorial rights in respect of Nara and Parpatana Bets only; it confirmed that such rights vested in the Thakores of Suigam. No necessary implications could be drawn from the Resolution as to the territorial rights in respect of the remaining bets. As to them, the Resolution neither upheld the claim of Sind, nor did it dismiss the claim of Suigam. It was left open in whom territorial rights vested in respect of those remaining bets. (Official Records, 105th Meeting, para. 4; 107th Meeting, para. 5.)

According to India, when the Sind authorities laid claim to Nara Bet, the Government of Bombay examined the facts and decided that Nara Bet belonged to Suigam. The principle of half and half was neither invoked nor applied. The

Nara Bet Decision is a clear instance showing that there is no such general principle.

Pakistan pleads that the main consideration on which the Resolution proceeds is the proximity of the two islands in question to the Palanpur coast, and that the Decision is in fact a confirmation, endorsement and vindication of the principle of nearness of shores. It is clear from the correspondence leading to the Resolution that both sides were claiming that Nara Bet was nearest to their side and the reasoning was that the side to which the island was nearest was the side to which it belonged. The Nara Bet Decision also demonstrates the application of the customary rules of half and half across and the equal division of islands along the median line. It is, therefore, positive evidence supporting the median line principle.

India denies that the decision as to proprietary rights in the two bets was taken on any principle of proximity. According to India, the idea of proximity appears in the Resolution only where it is a question of convenience of administration. Earlier, the Resolution deals with ownership and thereafter, as a practical solution by reasons of proximity, the method of policing the bets is considered. The Resolution does not state that the proximity element shows that the bets belong to the Thakores of Suigam; ownership has been decided on quite a different and independent factor – that there is no evidence to suggest that these bets belong to Sind.

India points out that in the Report of Miles in 1823 (Ind. Doc. A-87) the islands in the Nara Bet chain, including Bordia Bet, were stated to belong to Suigam. To this, Pakistan replies that Miles had considered the whole chain as one island and had, therefore, considered them to appertain to the Suigam coast to which the chain was nearest. However, Miles had noted that in former times these islands had been also occupied and temporarily inhabited by parties of Rajputs, Sindis and Khosas. Similarly, Alexander Burnes had observed in 1828 that the people of Suigam claimed Nara Bet as theirs but being half way between Parkar and Suigam it was as often frequented by the Khosas and Baluchis (Ind. Doc. A-6, pp. 74–5).

Pakistan further argues that the Nara Bet Resolution accepted only the proprietary rights of the Thakores of Suigam. The Resolution expressly stated that in view of the exercise of authority during the previous 60 years, and of Imperial rights and interests, it was considered inexpedient to enter into any agreements with the Thakores of Suigam which would imply a recognition of jurisdictory title on their part over islands in the Rann. It would thus appear that, for the purposes of jurisdiction, even the two islands to which this Resolution related were not a part of any Indian State, and if they were not a part of British India either, their status in August 1947 would either be undefined or they would be covered by the definition of a tribal area under the Government of India Act, 1935. Pakistan pleads, therefore, that the Resolution did not dispose of territorial rights, but proprietary rights alone. (Official Records, 44th Meeting, para. 3.) Such dispositions of territorial rights could, under prevailing British law, only be made by the Governor-General in Council (The Indian Councils Act, 1861). Since this was not done in the Nara Bet dispute, the

conduct of the Bombay Government suggests they were not settling territorial rights at all, and this much was in fact expressly stated. In reply to a question of the Tribunal, Pakistan further states that the boundary of the former Province of Sind was conterminous in the Nara Bet chain area with the boundary of Suigam and that it was conterminous throughout with the boundary of the States which lay on the opposite side of the Rann.

India argues, on the other hand, that the Resolution says in clear words that there is no evidence that the Nara Bet ever formed part of the British District of Thar Parkar. It was not a part of British territory and is, therefore, not a part of Pakistan now. India also submits that the Resolution disposed of the territorial rights in respect of Nara and Parpatana Bets only; it confirmed that such rights vested in the Thakores of Suigam. In India's submission, "proprietary rights" in the context had the connotation of "territorial rights", "dominion" or "sovereign rights". (Official Records, 105th Meeting, para. 4.) However, the Thakores of Suigam were non-jurisdictional jaghirdars (grantees of land). As a matter of convenience, therefore, someone else was to maintain law and order. The title undoubtedly vested in the Thakores of Suigam, but for practical convenience, if necessary, the British authorities (the Palanpur Agency instead of Sind) would continue to keep a police post there as Suigam was unable to do so.

According to India, there was no question here of surrendering any territory. The Bombay Government itself had said that these bets were at no time part of British territory. They realised that they had wrongfully occupied the bets. When this was pointed out, they rectified the situation. Hence, it was not a question of surrendering anything, and the Pakistan argument in this behalf is beside the point. As regards the inexpediency of the British entering into any agreement with the Thakores of Suigam, India explained that the Thakores were non-jurisdictional Talukdars and to enter into an agreement with them might give an idea that they exercise such power in the bet as otherwise, by reason of their status, they were not entitled to do; they must continue to remain non-jurisdictional Talukdars. As for the Pakistan argument about Nara Bet being an undefined area or tribal area, India states that the Nara Bet Decision was not only a negative finding, viz., that it did not belong to the British, but also a positive finding, viz., that it belonged to Suigam. When there was a problem whether proprietary rights belonged to the British or the Thakores of Suigam it was wholly unlikely that the British could have confined themselves to stating the negative. Counsel for India says:

> "The conclusion to which Pakistan invites you... is based on this, that territorial rights, proprietary rights, do not mean sovereignty or sovereign jurisdiction. Therefore the sovereignty or sovereign jurisdiction is left undetermined, and they call in aid of their submission the last part which says that these persons are not to have an agreement because that would imply a recognition of something. But I point out to you that it is not a queston of the recognition of jurisdiction but a recognition of jurisdictary title which has to be referred back to the fact that they [the Thakores of Suigam] are non-jurisdictional jaghirdars. The Resolution is complete in itself and it would be a fallacy to think that something was left undecided." (Verbatim Records, p. 10686.)

In its final submissions, Pakistan reiterates that the question of proprietary rights in Nara and Parpatana Bets was decided by the Government of Bombay

without prejudice to sovereign rights. The Commissioner in Sind had expressly stated that the withdrawal of the Sind police post should take place without prejudice to any rights, territorial or otherwise, which the British Government might have. Since the claim of Suigam was to all islands of the Nara Bet chian, and the Decision was confined to the two bets closest to the coast of Suigam, the Decision in fact furnishes another instance of the traditional and customary rights of the inhabitants and chiefs of coastal territories to the islands which are nearest to their coast. Whether the Decision was competent or incompetent, whether it had the effect of settling territorial rights or not, in fact it is the principle of nearness of shores which is endorsed and vindicated thereby.

Pakistan relies on the Nara Bet Decision as demonstration of usage and exercise of jurisdiction in relation to the Rann.

5. *The Kennedy "Valuation Judgement" (1898)*

By way of introduction, it may be mentioned that Kutch claimed that Morvi, a State in Kathiawar on the opposite side of the Little Rann, was in fact an off-shoot of Kutch and under the sovereignty of Kutch and that Kutch was the owner of both shores of the inner and outer Gulf of Kutch. Kutch said that it had maritime supremacy over both the gulfs. There was a port on the Morvi side – the port of Wawania – and Kutch claimed that, in exercise of its maritime supremacy, it had the right to collect taxes on goods which came to that port. Morvi, on the other hand, had nine villages on the mainland of Kutch, some of which abutted on the Little Rann so that, opposite those villages which abutted on the Rann, Morvi was in command of both edges of the Little Rann. This created a complicated entanglement of rights on both sides. Kutch claimed certain rights across the gulf and across the Rann in Morvi territory and Morvi claimed certain rights across the Rann in Kutch territory. Many attempts were made to disentangle this entangled bundle of rights. Commissions were appointed by the British Government in 1836, 1842, 1848, 1866, 1889 and 1891, but the decisions taken by these Commissions, instead of helping to resolve the entanglement, actually made the parties firmer in their various positions and their disputes became even more bitter. As a result it was decided that the best solution would be to separate the interests of Morvi and Kutch and further Commissions were appointed for the purpose, the last one being that of Kennedy, appointed in 1894. Kennedy submitted his "Valuation Judgement" (hereinafter called the "Report") in 1898.

The duties of Kennedy were, as defined in the relevant Government Resolution, "[t]o proceed to an appraisement of the right, interests and property involved in the Cutch–Morvi disputes upon a strict pecuniary basis, consistently with the principle of an entire separation of interests". (Pak. Doc. B.267, para. 8.)

Kennedy found that it was impossible to make a complete separation of interests. He proposed that out of the ten villages which Morvi had as enclaves in the Kutch State, Morvi should retain six villages which would become one compact unit and that Morvi should give up the other four villages. As regards Kutch, his suggestion was that Kutch should restrict its maritime sovereignty to its own shores and give up such rights of sovereignty extending towards the

shores of Morvi State and also that Kutch should give up its right to collect the main part of the customs and other duties from Wavania port. He held that the money equivalent of what each would give up would be equal and hence he said that on the whole justice would be done.

Kennedy selected the channel of the Chach Nes as the boundary mainly on the grounds that it was a main channel of the Inner Gulf, was approximately intermediate between Kathiawar and Kutch, was the only definable intermediate boundary and should be neutral, as otherwise Morvi had no available outlet into the open sea. He further observed:

> "On the east side the spot (A) selected is at the termination of the Chach Nes, and where Cutch's maritime authority recognised by Government in the Inner Gulf must be held to terminate as a fact...
>
> "On the Runn the jurisdiction will be that obtaining on the Runn which, concurring with Col. Watson..., I believe is half and half across – a conclusion to be deduced from the Government Resolution of 6th March 1860 on the subject of the Keswala island in the Runn, of which one-half was assigned to Kutch and one-half to Dhrangadra. Of course as to this opinion with respect to the Runn, I refer to the interstatal claims only: the jurisdiction of the Paramount Power is not affected." (Pak. Doc. B.267, para. 11.)

It appears that Kutch objected to the line drawn by the Commission, contending that at point "A" the line was not half and half across the Rann and that the line did not co-extend with the limits eastwards of Morvi territory. Kennedy disposed of these objections thus:

> "These objections have no bearing, when it is remembered that in my appraisement it is the loss of maritime supremacy for which Cutch has to be compensated. The line must necessarily end where the Gulf ends for maritime purposes. The question of territorial jurisdiction is not affected one way or the other.
>
> "After separation of interests, where the sea extends for maritime purposes, Morvi will have its entire rights as far as a man can wade at low-water (subject of course to Cutch rights from its shore); where the sea stops – the rule, as already stated, is half and half across the Runn." (*Ibid.*, paras. 16 and 17.)

In the course of the Report, Kennedy also made the following observations:

> "Beyond point (A) Cutch has no maritime sovereignty: there is no open channel like the Chach Nes, except the Wagadrai, which is practically a Cutch River. The two feet of water forced up the Runn during the hot weather, and the similar flooding of the Runn from the downpour of the Bannas and Machhu rivers in the rains, cannot be said to extend maritime sovereignty. On the Runn the riparian States share half and half as laid down by Government in the case of the Keswala island, subject of course to the rights of the Paramount Power." (*Ibid.*, para. 88.)

The proposals of Kennedy were approved by the Secretary of State and the Governor-General in Council issued a Sanad in 1904 ordering the following arrangements for the purpose of giving effect to the decision:

> "(1) The Cutch and Morvi States respectively will, subject always to any rights and interests appertaining to the Paramount Power, have and hold their several coasts with riparian rights, rights of customs and all other rights and interests free each from any interference or obstruction by the other, on either side of a line drawn as follows: namely, commencing from the Gulf of Cutch the line runs along the centre of the Hansthal Creek, then from where Chach Nes joins the Hansthal along the centre of Chach Nes, right up to the present termination of Chach Nes at the point marked A on the accompanying map, which point A lies on a straight line between Vandhia village site and Tonk Hill, approximately equidistant (six and a half miles) from either: eastward of point A *the line runs along the centre of the Runn equidistant from the Cutch and Morvi shores*; the channels of Hansthal and Chach Nes are neutral.

"(2) On the Cutch side of this line the six villages of Adhoi, Halrao, Rampura, Wastwa, Gamrae, and Gharana will belong to the State of Morvi with no special privileges of trade but with the same rights that are enjoyed by many Native States holding small territories surrounded by British districts; while the rights of the Morvi State in the villages of Amardi, Janghi, Chandrodi, and Laliana Pati will be extinguished and the said villages will belong exclusively to the Cutch State.

"(3) On the Morvi side of the line the Morvi State will hold and enjoy all rights hitherto enjoyed or claimed by the Cutch State in the port of Vavania and all the maritime rights of Cutch in the territorial waters of Morvi." (Pak. Doc. A.8.)

Pakistan submits that the Report of Kennedy, which received the formal approval of the Government of Bombay and of the Government of India, and was confirmed twice by the Secretary of State, proceeds on the premise that the jurisdiction obtaining on the Rann is half and half across. In fact, Kennedy describes this as the "rule" on the Rann.

Pakistan also points out that in the Kennedy proceedings, Kutch in fact accepted the principle of half and half. Kutch had pleaded that point A was not half and half across the Rann. Kennedy then clarified that point A merely marked the termination of the maritime channel, and the question of territorial jurisdiction was not affected one way or the other by the reference to point A as the limit of maritime rights. Pakistan states that it is not aware of any record that either Kutch or Morvi had ever questioned the half and half principle, although Kutch made representations against the Kennedy Report as late as 1935.

Pakistan also draws attention to Kennedy's application of International Law in relation to islands in the Gulf adjoining the Kathiawar coast:

"In the case of islands near a coast Lord Stowell has held that where these were small they were to be considered appendages of the neighbouring coast.

"When such islands are at times connected with the mainland by a traversable passage of firm land, the identification of the two, as subject to the same sovereignty, is an irresistible conclusion.

"This may be taken as a basis for decision subject to usage, and the recognised maritime supremacy of Cutch." (Pak. Doc. B.267, para. 22.)

Pakistan considers that the use of the phrase "riparian States" in relation to the Rann is significant as a concept of the Rann for the purpose of division of rights between coastal States.

As for the Indian argument that Kennedy misinterpreted the Keswala Decision, Pakistan points out that there were other links between Kennedy and the Keswala Decision. Colonel Watson was quoted by Kennedy as having made the same deduction. The Commission of Baines in 1889 (Ind. Doc. TA 27) had spoken of a line to be drawn from the centre of the Rann between Kutch and Morvi up to the opening of the Inner Gulf.

To the Indian argument that Kennedy made only a passing reference to the Rann and did not compensate Morvi for half of the Rann, Pakistan replies that whether the tract, in a pecuniary sense, was worthless or not has no bearing on the ruling given by Kennedy that it should be divided half and half. Furthermore, the pecuniary question decided by Kennedy related to the mud soil of the Rann and was not any compensation for loss of jurisdictory title to the Rann.

India relies on a statement made in 1887 by the Rao of Kutch (Ind. Doc. TA 15, p. 20) that the Lumsden Commissions of 1842 and 1848 had declared that the whole of the [Little] Rann between the Kutch and Kathiawar shores belonged absolutely to Kutch.

India pleads that the statement of Kennedy, which is relied upon by Pakistan – that he believed that the jurisdiction on the Rann was half and half across – proceeded on an erroneous interpretation of the Keswala Bet decision. The conclusion drawn by Kennedy from that Decision was clearly unjustified and the belief he expressed was without foundation. The Keswala Decision was based on factual investigation and not on any principle. There is no reference to the half and half principle at all; there is no such reference to equitable distribution; there is no reference to the median line. No principle was alleged, no principle was in issue; no principle was claimed and none was put forward. The decision was on the facts of the case. Moreover, Keswala was a dispute as to an island and there was no question about the Rann.

India further argues that the decision of the Government accepting Kennedy's findings (Pak. Doc. A.8) was also not based on the application of any principle but on the facts of the case. It was not any principle of the median line or equitable distribution, but the principle that if on facts it was found that a particular Indian State was entitled to proprietary rights in any part of the Rann, that right should be upheld. A State had to establish its right first and, if successful in doing that, it could take the whole or half or three-quarters. The decision of Kennedy cannot be taken as a historical precedent or as a ruling which entitles some other state to invoke the principle of half and half without first establishing its rights to the Rann. In the dispute settled by Kennedy, both Kutch and Morvi claimed the whole Rann between them, and no one argued about half and half. India submits, therefore, that no principle – whether it is half and half or nearness of shores – can be deduced from the Kennedy Report. The Report is not concerned with the Great Rann; it is concerned with the Little Rann where there were long-standing disputes over the years between rival Indian States. Any adjudication on these disputes can afford no guidance and form no precedent when the question is between Sind and Kutch in the Great Rann.

India points out that the Rann came in for only a passing reference in the proceedings held by Kennedy. Kutch did not say one word about the Rann, since it was not bothered about this slice of Rann at all. It was a completely subsidiary and insignificant matter. While Kennedy did not dispute that Morvi had a proprietary title to the portion of the Rann between Janghi and its shore, he did not compensate Morvi for the loss of half of it since it was mud soil of no pecuniary value.

In India's submission, the question between Sind and Kutch had been settled by express governmental Resolutions. Even though officials in Sind did make claims to half, the British Government did not accept such claims, and in their Gazetteers, maps, Resolutions (including the Resolution of 1914) and at the time of the creation of the Province of Sind in 1935 showed the Kutch boundary along the northern edge. This concrete evidence cannot be wiped out

by a tenuous suggestion of the existence of some custom which, India submits, cannot be deduced at all.

In stating that he believed that the jurisdication obtaining on the Rann was half and half across, Kennedy concurred with Colonel Watson. The document of Colonel Watson is not on record and India argues that it is not known what Watson said and that the inference to be drawn is that he said something, but that it is not possible to state whether he said it relying on something else or as his opinion.

To Pakistan's argument about the reference to riparian rights in the Kennedy proceedings, India replies that this is a clear misreading because the riparian rights are referred to in relation to the creeks – the Hansthal Creek and the Chhach Nes and the inner Gulf of Kutch which were the subject matter of dispute and in respect of which Kutch wanted to exercise sovereign rights – and have nothing to do with the Rann.

To this, Pakistan replies that the Reports given by those Commissions are not on the Record of this Tribunal, and that Kennedy's own reproduction of Lumsden is more reliable than that of Kutch which was an interested party. Kennedy does not mention that the question of the Rann had been raised before Lumsden. The dispute in 1842 related to rights in the port of Wawania and the claim of Kutch to ownership of either shore of the Gulf as far as Wawania, i.e., up to the edge of the Rann which lies to the east of Wawania.

Pakistan places reliance, for its part, on the following observations made in 1876 by Peile, the Political Agent in Kathiawar, while forwarding the Morvi claims to the Government of Bombay:

> "14. In the present year,...I find a claim by Cutch to 'sovereign jurisdiction on the waters of the Runn' disputes by Morvi...
>
> "18. Now the expression 'sovereign of the waters' appears to have been taken from Mr. Lumsden's report. But Mr. Lumsden in his first report does not call the Rao 'sovereign of the waters', but 'sovereign of the *Cutch waters*'.
>
> "20....it is plain that the waters off the Morvi and Adhoi coast were not Cutch waters...
>
> "25. And now to revert to the subject of a boundary in the Gulf and Runn. I see no reason to believe that the Rao is sovereign of any other than the 'Cutch water',...
>
> "26. If then it is admitted that Nawanagar and Morvi are sovereigns of the waters of their own shores, the natural inference is that the Rao's jurisdictional rights do not extend beyond the middle of the Gulf or Runn where he is master of the western shore, and where Morvi is sovereign of both sides; the Runn between is in the jurisdiction of Morvi.
>
> "27. One decision has been given according to this view. It relates to Keswala, an islet further up the Runn about midway between Cutch and Kathiawar. This islet was divided equally between Cutch and Dhrangadra (Kathiawar) by a Government Resolution [in] 1860...
>
> "34. Beyond the tidal waters the dry Runn is claimed by Morvi, as far as its territory extends *on either shore*. This claim seems to me reasonable and just. Beyond this, where Cutch has the western shore and Kathiawar the eastern, a line should be drawn up, the Runn equi-distant from either margin, and this should be the boundary." (Pak. Doc. B.282.)

To the above, India replies that this is only the opinion of Peile, and insofar

as he refers to the Keswala dispute, that was decided entirely on the merits of the matter and not upon any custom.

Pakistan also relies on the Award of the Commission of Baines in 1889 (Ind. Doc. TA 27) in which it was recommended that Morvi should receive sovereignty over the waters of the Inner Gulf south of a line drawn from the centre of the Rann between Morvi shore and Wagur in Kutch. India states, on the other hand, that the Report of Baines is worthless and that, ultimately, recourse has to be had to Kennedy's Report. In any case, Baines is dealing with the waters of the Inner Gulf and not with the Rann directly. The centre of the Rann is only referred to as the starting point of the line in the Inner Gulf.

6. *The Nara Bet after 1897 and the North-Eastern Rann*

The Parties agree that the 1897 Resolution concerned only the Nara and Parpatana Bets.

However, India denies that the Resolution can be construed to mean that the Suigam claim to the other bets in the chain was rejected. That question was left open. According to India, the Suigam claim to the other bets was in fact recognised later. India further states, in reply to questions from the Tribunal, that the 1897 Resolution was only concerned with two bets and at that stage nothing was said about the Rann in the vicinity of these bets. However, as a supposition, India goes on to state that since a question of access from Suigam to those bets arose, it is conceivable that a narrow strip of the Rann might have belonged to Suigam. The India Memorial also takes note that "a small portion of the north-eastern part of the Rann might have belonged to ... Suigam and Wav which merged with India" (para. 175), and, therefore, in any event, that would not affect the claim of India that the whole Rann is a part of India.

Pakistan states, on the other hand, that the 1897 Resolution accepted only the proprietary rights of Suigam in Nara and Parpatana Bets without prejudice to sovereign rights. However, Pakistan notes that, whatever the correct interpretation of this Resolution might be, everyone seems, nevertheless, to have taken it that Nara and Parpatana Bets were part of Suigam for other purposes as well and the Resolution had been implemented so as to confer territorial rights (dominion) upon the Thakores of Suigam, who were non-jurisdictional jaghirdars of the Palanpur Superintendency. In the context of Indian Map B-52, Pakistan goes on to object to the depiction of the two bets as separate from Suigam on the ground that this contravenes a formal implemented decision. Though the 1897 Resolution merely settled proprietary rights, Pakistan argues, jurisdiction had been transferred to Palanpur, and Indian Map B-52 inaccurately shows Nara and Parpatana Bets as cut off from Palanpur. Pakistan further points out that the Kutch claims to the whole of the Rann, which were mechanically repeated in some official publications as well, are clearly negated by India's own admission that the north-eastern part of the Rann belonged to Suigam.

In 1934, the question of jurisdiction over the Nara Bet chain, as well as over the Rann of Kutch, was again raised. The Government of India had been for many years much exercised by the smuggling of goods from Kutch (which had a

low tariff on imports) into British India (which had a high tariff). The Secretary in the Foreign and Political Department of the Government of India addressed the Agent to the Govenor-General [the A.G.G.] in the States of Western India in the matter, suggesting two possible methods of dealing with the problem. The first of these was to deal directly with Kutch and to try and get it to agree, in return for an annual payment, to let the British Government establish a customs cordon at the Kutch frontier with the main customs post presumably situated near the point where the eastern boundary of Kutch most closely adjoined the mainland, and the rest of the customs line perhaps lying along the Rann of Kutch. The Secretary then observed: "...apparently Govt. have no jurisdiction over the Runn, but you [the A.G.G.] may have papers bearing on this." (Pak. Doc. B.324.) The second method suggested was to negotiate with the States along the border of the mainland in Gujarat and acquire from them in return for a suitable consideration jurisdiction for custom purposes over a narrow strip of land.

The A.G.G. then made the following enquiry from his office: "Has Govt. any jurisdiction over the Runn of Cutch & where does the Cutch boundary lie?" (Pak. Doc. B.325.) Thereafter, the question was examined by the office of the A.G.G. The first note on the file (written by a clerk, according to Pakistan) stated that the Rann was included in the State of Kutch, citing as authority some "u.o. notes" (unofficial notes – a style of writing used in Government correspondence) of the Bombay Government in 1905. These u.o. notes cannot be traced by the Parties and are not on the record of the Tribunal. The office note stated further that, in 1897, it was decided that the proprietary rights over the Nara and Parpatana Bets vested in the Thakores of Suigam while the jurisdiction was exercised by the British Political Agent, Palanpur. The note also mentioned that a Member of the Governor of Bombay's Council in 1897 had observed that sovereignty over the Rann of Kutch vested in the Paramount Power.

The second note on this file (Pak. Doc. B.325), is by the Secretary to the A.G.G. who noted:

> "...from the references quoted it would seem that so far no authoritative pronouncement has ever been made as to jurisdiction in the Rann; in fact, the thorny question has intentionally been disregarded. I cannot see how Sovereignty can be with the Paramount Power & yet the Rann to be within the boundaries of Cutch State!"

The Secretary later went into the case in greater detail and examined the 1897 Resolution; the 1913–14 Settlement and the Sanad in Pakistan Document A.3. He observed, finally, that it seemed extremely difficult from the instances cited to draw any definite conclusion on the question at issue and was inclined to agree with the Officers of the Bombay Government that the question of jurisdiction in the Rann be left alone if possible. Pakistan points out that it does not appear from the file whether the A.G.G. took any position on the question of jurisdiction in the Rann apart from pointing out that not all maps showed Nara Bet as within Kutch. The A.G.G. recorded a note that it seemed clear that ownership of Nara Bet and Parpatana Bet vested with Suigam and, that being so, it would be possible to arrange for a continuous customs line by negotiation with Radhanput and a number of chiefs.

Later in the same year the A.G.G. sent his Report to the Government of India, with which he enclosed a list of States and Estates, lying along the proposed Customs Line, which owned the islands along the Rann of Kutch to the Nagar Parkar District. This list included Suigam, and the islands mentioned thereunder are Khejadia Wala Bet, Nara Bet, Parpatana Bet and Bordia Bet. The A.G.G. also observed:

> "Before proceeding, it seems desirable to define further exactly what we want to buy. I think we shall fail if we try to buy either civil or criminal jurisdiction ... I take it that what is wanted is only the right to levy duty at British India Tariff rates ...". (Ind. Doc. TA 22, p. 6.)

In 1935, an Agreement was signed with the Talukdars (chiefs) of Suigam, which made two provisions.

(*a*) The British Government undertook to make in perpetuity an annual payment to the Talukdars of the Suigam Estate in consideration of their grant to the British Government "in perpetuity [of] the right to levy and retain customs duties on articles which, having so entered the said Estate, so cross the said line, and to all acts such as the Establishment of customs posts ..." (Ind. Doc. A-89);

(*b*) Secondly, the British purchased a line 40 feet in breadth running roughly north-west to south-east through the Rann of Kutch from the south-east boundary of the village lands of Jaleli in Nagar Parkar District via Bordia Bet, Nara Bet, Khejadia Bet up to the Suigam village, thence roughly north to south through the village lands of Suigam up to the boundary of the Limboni Estate. (Ind. Doc. A-81, p. 165.)

The line was also shown in a map attached to the Agreement. (Ind. Doc. A-89.)

India has produced the subsequent correspondence (Ind. Doc. TA 22) to show that the British Government permanently acquired from Suigam, on payment of compensation, a corridor for the new Customs Line, 40 feet wide and 23 miles long. The sale price was calculated at the rate of Rs. 1.0.0 per acre as the annual value of the waste land used for grazing, etc., and at Rs. 0.5.4 per acre as that of Khari (saltish) land, and compensation was then allowed at 25 times the said value. The rates were those of 1885. It was noted that the nature of land being acquired was mostly Khari land. At these rates, the annual value of the whole piece of land amounted to Rs. 41.11.8, 25 times which came to Rs. 1043.3.8. On receipt of sanction for this payment from the Government of India, necessary action was taken for the permanent acquisition of land for the new Customs Line from Suigam to Nagar Parkar. This land was acquired on behalf of the Collector of Customs, Bombay, to whom it was made over.

According to India, the Customs Line transactions may be treated as showing that the Nara Bet and other bets in the chain as well as the portion of the Rann up to the village Jaleli in Nagar Parkar District (Sind) belonged to Suigam. In reply to a question by the Tribunal, India states that it is correct to say that the agreement is to the effect that on the north-east of the Customs Line, as described, the territory belonged to Suigam. Counsel for India states further:

> "...I must confess to you and point out to you that the line also includes a part of the Rann, which necessarily leads to the implication that some part of the Rann – the

extent of which is not necessarily defined – belonged to Suigam". (Verbatim Records, p. 11813.)

India also notes that the connecting strips in the Rann were included in the British purchase.

India states that, by virtue of this agreement, the British bought a pecuniary right and the proprietary right, i.e., the customs right and the property. The 40-foot corridor was acquired by the British as a private proprietary transaction; no territorial rights to that strip were acquired. The land was purchased by the Central Government of India, and not by Sind. Like a private individual, a State can have property. The Central Government bought this land since customs matters were in the province of the Government of India.

India relies on the Customs Line Transaction as evidence that Bordia Bet and the Rann up to Jaleli were considered as part of Suigam, refuting thereby the border as claimed by Pakistan. Thus India states:

> "The first thing it does is to pass over Bordia Bet. We are rather emphasizing all this because it is one of the key points, as it were, of the median line, that Nara Bet and Parbatana Bet were disposed of... therefore it is just halfway... It is for that purpose we are putting this before you, mainly to show that Bordia Bet belonged as much as Nara Bet and Parbatana Bet and the line was a line which went through these bets right up to Nagar Parkar." (Verbatim Records, p. 11802.)

India further elaborates:

> "What happened was that the land itself within this line was acquired by the British Government from the talukdars of Suigam, and compensation was paid for that acquisition, clearly showing, therefore, that this particular territory, these lands, were taken as belonging proprietorially to the talukdars of Suigam." (Verbatim Records, p. 11773/80.)

India also draws attention to the list prepared by the A.G.G. in 1934 in which he states Suigam to "own" Bordia Bet. (Ind. Doc. TA 22, pp. 1, 9.) They were non-jurisdictional Thakores but they were the rulers of their territory.

> "They also owned Nara Bet and Parbatana Bet. That must necessarily be as a part of their territories. Similarly, now we bring in Bordia Bet also as a part of their territory, because it is said here that these islands are owned by the Thakores of Suigam. It must seem in the same manner in which Nara Bet and Parbatana Bet were owned." (Verbatim Records, pp. 11793–4.)

India also relies on the Customs Line transactions as showing that the Rann was considered as land since the Bombay Land Customs Act was applied at the time. According to India, it was then stated expressly that the area concerned was to be regarded as land for the application of this Act.

On the other hand, Pakistan places reliance on the Customs Line transactions as contradicting the case of India that the whole Rann belonged to Kutch, and as showing that Kutch had nothing to do with at least the north-eastern portion of the Rann. No question of consulting Kutch with reference to this Line being taken through the Rann seems ever to have arisen. Nor did Kutch ever object to these proceedings. Pakistan further states that the express agreement made by the British with Suigam is in sharp contrast with the absence of any documents showing that the British consulted Kutch for custom patrolling in the Rann.

Pakistan argues that a preventive line is not the border, and contests the conclusion drawn by India that this incident shows that the bets in the chain up to Jaleli in Nagar Parkar District belonged to Suigam. Pakistan states:

"...this is only a line of convenience wherever it can be put, the essence of the agreement is merely this: the goods will pay a tax to the relevant authority when they enter that territory, but the line of control for the purpose of entry can only be placed where it is physically possible to place it. This is the track going along through this Nara Bet chain. You cannot put customs posts etc. in the Rann portion of the Rann, so you put these on the Bet portion of the Rann and there is the track already in existence. You put your control line along that track and you say: that those goods which will enter the fiscal limits of Suigam after crossing this line, the duties on those will be collected by the British and not by the Thakurs; and the Thakurs will be paid a lump sum in perpetuity. This is the meaning... It only shows where the British control line was put for the purposes of collecting these taxes which the Thakurs of Suigam had renounced and which the British Government were not going to collect...

"...[India] are wanting this Tribunal to draw the conclusion that a portion of the Rann because of this, belongs to someone else. In fact, however,...that conclusion does not follow at all. This does not show to whom that part of the Rann belongs. This is only where the control line is put." (Verbatim Records, pp. 8711–2.)

Pakistan points out that the agreement signed with Suigam (Ind. Doc. A-89) has an English as well as a Gujarati text. Both are signed and both seem to be originals. The English text is not clearly worded in its formulation that the Suigam Estate was renouncing its right "to levy customs duties on articles, which, having entered the said Estate by land cross from the west and south west the line specified in the Schedule hereto annexed...". (Ind. Doc. A-89.) Pakistan states that if the articles have already entered the said Estate, they cannot cross from the west and south-west. That is to say, they can enter the line from the west and south-west, but they cannot, having already entered, cross the line from the west and south-west. On the other hand, Pakistan considers the Gujarati text as making sense, and translates it as follows:

"...and passing from the western and south-western direction the line specified in the schedule hereto annexed".

Pakistan explains this to mean that, having entered the said Estate by land and passing from the western and south-western direction of the line specified in the schedule to the agreement.

India explains that the English text is not well-worded and that, indeed, the wording both in English and Gujarati is a little puzzling. But, India explains that the purport of the whole transaction is clear from the Notification issued by the Government of India in 1935 (Ind. Doc. TA 22, p.18) which states that

"...the [Governor-General in Council] is pleased to direct –
(1) that on articles entering any of the said States or Estates by land and crossing the said line there shall be levied...". (Verbatim Records, p. 11833.)

Pakistan points out that on the map annexed to the agreement, the Thar Parkar boundary is shown as three-quarters of a mile north of Bordia Bet. Since the southern-most edge of the mainland is at that point more than three miles from Bordia Bet (see Ind. Map B-1), it would appear more than almost three miles of the Rann south of the mainland of Nagar Parkar are shown as within the Thar Parkar Boundary.

Pakistan also draws attention to the schedule to the agreement which states that the strip of land being acquired stretched southwards up to the boundary of Limboni Estate. Starting from the Limboni boundary, the compensation paid to Suigam must be for a strip that could not extend beyond Parpatana Bet. From

the documents produced by India, it appears that compensation was paid to Suigam for 23 miles only. Since the total distance involved in the Line described in the schedule is more, the position taken by India that the entire north-eastern Rann belonged to Suigam is disproved.

Pakistan has produced Pakistan Documents B.324 and B.325 for the purpose of rebutting the Indian case that the question of the Rann as a part of Kutch was a decided matter, since these documents suggest that neither the Political Department of the Government of India nor the Agent to the Governor-General were aware that the Rann belonged to Kutch, as is claimed by India. According to Pakistan, the conclusion clearly emerging from these documents is that in 1934 this question was fully open and expressly stated not to have been decided.

In this context, reference is made to Chapter IX, Section 14, which contains further material relating to the activities of the Central British Customs Organisation.

Pakistan sums up its position as follows:

> "[India has] produced document [T]A 22 as additional evidence... showing that they [the British] paid for the tract under the customs line up to Jaleli. There was a controversy in regard to that, and [Pakistan's] submission on it is that even if they do pay an additional amount to be on the safe side, they do not want to make an error in their own favour; that does not convert the status of the territory into anything different from what it actually is. The actual Government decision is merely the [1897] Nara Bet decision... [which] was confined to proprietary rights in the Nara Bet and the Parbatana Bet. There was no decision regarding the remaining Bets, and that position is accepted by [India]... it has never been decided that up to Jaleli it belonged to the Thakores of Suigam. The compensation [in 1935] is merely with reference to proprietary rights, and in [Pakistan's] submission is not really relevant to the determining of sovereign rights. That is to say, it does not show that those who paid the compensation were proceeding on the assumption that the sovereign rights up to Jaleli belonged to the Thakores of Suigam. [Pakistan's] general point, that even if they did think so it would make no difference because in the British political system if a functionary thought so it was not going to convert the status of the territory, applies here too." (Verbatim Records, pp. 17962–6.)

During Osmaston's Survey, the question of sovereignty over the north-eastern Rann came up for consideration. In 1938, Sind, Kutch and Wav laid discordant territorial claims to the Rann (Pak. Doc. B.21). Sind claimed half of the Great Rann (Pak. Doc. B.24), Kutch claimed the whole (Pak. Doc. B.23) and Wav laid claim to the whole of the north-eastern portion of the Rann down to a straight line running from near Chudia to Padan, roughly north-east of the Nara Bet chain of islands. The boundary claimed by Wav can be seen on Indian Map TB-20A. Wav stated that its boundary with Marwar (Jodhpur) ran in a north-westerly direction in the Rann in a stright line up to Deriali in Sind (near the Eastern Trijunction), where it joined Sind and then ran along the coast of Sind up to the village Chudia in Nagar Parkar "where the boundary of the Wav State between Sindh and Wav ends and that of Suigam taluka in the Sabarkantha Agency begins and thence runs straight across the Runn to the east to a point on the mainland north-west of the village of Padan of the Suigam taluka" (Pak. Doc. B22). Wav also stated that the boundary as drawn on the 32-mile map of India, corrected up to 1928 (Ind. Map B-16), showed Wav and Suigam together "minus that portion of Runn south of the line indicated... belonging to Suigam

taluka" (*ibid.*), but that, in 1938, the Suigam Taluka was no longer under the jurisdiction of Wav.

India states that, though Kutch had not been consulted in 1897 or 1935, at the time of Osmaston's Survey Kutch came forward and claimed the whole of the north-east Rann. There was then a dispute between Kutch and Wav concerning boundaries in the north-eastern portion of the Rann which remained unsettled from 1938 up to 15 August 1947. In reply to questions from the Tribunal, India states that there is no record available to indicate that Suigam was either consulted by, or made a claim before Osmaston. Nor is India aware as to how Khijadia Walla Bet, Nara Bet, Parpatana Bet and Bordia Bet, which in 1935 belonged to Suigam, had ceased to belong to it. These bets, however, must have been transferred to either Kutch or Wav, and formed part of the unsettled dispute of 1938. According to India, at any rate the dispute with Kutch remained unsettled until 1947, whether the other party was Wav or Suigam.

India also states that, originally, when the Customs Line was drawn along the Nara Bet, Suigam and Wav were one unit; in fact, Suigam was part of the Wav State. But in 1938, the position was (as explained by Wav in Pak. Doc. B.22) that Suigam had become a separate taluka, and the Wav boundary was stated to meet the Suigam boundary in a straight line running north-east of Nara Bet, as shown in Indian Map TB-20A.

Finally, India argues that, for the purposes of the present adjudication, it makes no difference whether the area actually belonged to Kutch, Wav or Suigam since all these States have acceded to India, and whatever belonged to them has come to India.

India states that the next question is what happened to the Customs Line purchase when the two Dominions of India and Pakistan were created in 1947. At no stage did this strip form a part of Sind. The land was acquired for a specific purpose, viz., to facilitate the recovery of customs. On the departure of the British in 1947, this right would lapse and revert to the Suigam Thakores. On the accession of Suigam to India, that right would pass to the Central Indian Government. The British had purchased it like private property. (Verbatim Records, pp. 11744/5 and 12933/40.) The area had never been added to Sind by any notification order or anything of that kind. It was the Government of India which had acquired private title to strips of land from Suigam to Jaleli running through Khijadia Walla Bet, Nara Bet, Parpatana Bet and Bordia Bet, and the connecting strips in the Rann were also acquired. The customs outposts in this area, as well as on the line along the northern edge of the Rann as shown in Pakistan Map 92, were not established and administered by the Sind authorities but by the Government of India.

Pakistan argues, on the other hand, that the actual question of sovereignty was decided neither in 1897 nor in 1935. The Customs Line transaction proceeded on the basis of proprietary rights.

Pakistan further states that British Indian laws could apply only in British India territory and, to be British Indian territory, an area had to be a part of a Governor's Province or a Chief Commissioner's Province. This constitutional framework has to be kept in mind in order to understand the status of the tract

acquired by the British for the Customs Line. The Pakistan arguments in this connection are stated in Chapter IX, Section 14.

India points out that on the purchase of the customs rights from Suigam, the Bombay Land Customs Act was extended to the Customs Line in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902. In other words, it was extended not in exercise of the power which the Government of India would exercise within its own dominions but by application of a power exercisable specifically and specially by virtue of the Foreign Jurisdiction Order made under the Foreign Jurisdiction Act. The British Government exercised "foreign jurisdiction" in territory which did not belong to it.

Pakistan argues, finally, that, whether the north-eastern Rann belonged to Wav or Suigam or Jodhpur, this contradicts the claim of Kutch that the entire Rann always belonged to it, which position was also taken by India at all times before the submission of the Indian Memorial. Pakistan also denies the Indian contention that the Indo-Pakistan boundary in the disputed region can be determined irrespective of whether the whole of the Rann belonged to Kutch or whether a north-eastern portion of the Rann belonged to Wav or Suigam.

It may also be noted here that, in response to a question from the Tribunal, both Parties state that they agree, for the purpose of this case, that the boundary of Jodhpur (Rajputana) in the Rann proper is correctly depicted in Indian Map B-20. India also agrees that paragraph 230 of the Indian Memorial may be amended to read that a part of the Rann belonged to Jodhpur. Pakistan states that the case of Pakistan is that all coastal territories extend into the Rann.

7. *Maps Which Show Boundaries in the Rann*

Pakistan points out that some maps exhibited before the Tribunal show boundaries.

Pakistan Map 85 is from the Indian Atlas Sheets of 1889 on the scale of one inch to four miles, reprinted in 1921 with additions and corrections from extra-departmental information. Pakistan Map 86 is a 1948 reprint of the same, and carries a foot-note that the boundary and administrative divisions shown on this map are those existing before 15 August 1947. A number of bets in these maps are shown as the territory of Dhrangadhra, Kutch, Radhanpur and Varahi. Poong and Keswala Bets are shown as divided between Kutch and Varahi and Kutch and Dhrangadhra respectively. Pakistan Map 85 shows a colour riband and symbol as the boundary of Radhanpur extending over a portion of the Rann. Poong Bet also carries a similar riband and symbol dividing the island between Varahi and Kutch. Pakistan states that Pakistan Map 86 shows or treats the portions of the Rann as belonging to one or the other coast by the markings of the islands. This map also carries a dash and dot symbol over a portion of the Rann extending from the Radhanpur coast.

Pakistan also places reliance on Pakistan Map 101 which is from Pullan's Survey on the scale of one inch to one mile. It was published in 1883. This map also shows Kesmari (Keswala) Bet as divided between Kutch and Dhrangadhra, and Poong Bet between Kutch and Varahi. Pakistan draws particular attention

to the spacing of the words Kutch, Dhrangadhra, Radhanpur and Jhinjuvada over portions of the Rann itself. According to Pakistan, this shows that parts of the Rann are depicted as belonging to these different States.

Pakistan Map 103 is a paste-up of two sheets from Pullan's Survey on the scale of one inch to one mile and shows the Nara Bet chain and the Rann in its vicinity. The Santalpur boundary on this map is shown with a dash-and-two dots symbol, which can be seen passing into the Rann at its northern limit.

Pakistan Map 111 was published in 1887 from Pullan's Survey of the region in the vicinity of Santalpur. It can be seen in this map that Morvada on the edge of the Little Rann includes a portion of the Rann.

In response to a request from the Tribunal Pakistan has prepared Pakistan Map 104 which depicts the line of division in the Little Rann between Kutch and other coastal States, and shows how the median line runs through the Little Rann in keeping with the division of bets in the Little Rann.

To the Tribunal's question about the boundary of Kutch in the Little Rann, India replies that, on the eve of Independence, the boundary of Kutch lay along the southern and eastern edges of the Little Rann and not through the Little Rann. However, a small bit was awarded to Morvi in 1904. Some bets in the Little Rann belonged to some of the abutting States. Two of the bets were divided between Kutch and other States abutting upon the Little Rann by Government decisions.

Pakistan states that the following maps show a boundary along the Nara Bet chain of islands: Indian Map B-46 (1878) shows a boundary between Radhanpur and Kutch along the Nara Bet chain. Indian Map B-49 (1906) shows a boundary between Palanpur and Kutch along the Nara Bet chain. Indian Map TB-21, which is the first set of proof sheets submitted in 1913 for the Fifth Edition of the 32-mile map of India, as well as the printed Fifth Edition of this map (1915), show a boundary alignment running across the Nara Bet chain from Suigam to Nagar Parkar.

8. *Other References to Possessions of Indian States in the Rann*

Pakistan states that, apart from the evidence discussed above, there are references in the documents listed below which establish that the various States on the borders of the Little Rann and the north-east portion of the Great Rann exercised control over portions of the Rann and islands on it.

(*a*) Radhanpur Administration Report, 1925–26 (Pak. Book 74).

"[Radhanpur is]... Situated in the North of Gujarat; its Western boundary after touching Warahi passes over some portion of the Rann of Cutch;...". (Verbatim Records, p. 10861.)

(*b*) The Ruling Princes, Chiefs and Leading Personages in the Western India States Agency, 1928.

Dhrangadhra: "Its area is approximately 1,167 square miles exclusive of the area of the Dhrangadhra portion of the Rann" (Ind. Doc. TC 1).

(*c*) Letter No. C/555-32, 7 February 1933 from the Secretary to the Agent to the Governor-General in the States of Western India to the Collector of Salt Revenue, Bombay.

"3... His Highness of Radhanpur has now ordered the outpost at Vachhda Bet in Radhanpur State to be re-established. The strength of the post will be 5, including 2 mounted men." (Pak. Doc. B.215.)

(*d*) Letter No. 15, 8 December 1936, from the Ruler of Dhrangadhra to the Agent to the Governor-General Regarding establishment of a Customs Line around Kutch.

"4. Regarding appraisement of goods imported into the State through Maliya, I must explain the State is not expected to maintain a preventive line against Maliya in the same way as against Cutch – since Maliya, so far as its portion of the Runn is concerned, is under a similar obligation itself." (Pak. Doc. B.216.)

(*e*) Memoranda on Indian States, 1940 (Pak. Book 78).

Morvi: "The area of the State which is shown as 822 sq. miles in the tabular statement does not include the area of the Adhoi Mahal, portion of the Runn and of the Swamps in Wawania Mahal of the State ...". (Verbatim Records, p. 10861).

(*f*) Letter No. 31, 9 October 1941 from the Manager of Maliya State to the Political Agent, Western Kathiawar Agency (Pak. Doc. B.217).

In this letter, the Manager of Maliya State reported that the Maliya police were sent to the Rann on 23 February 1941 for the apprehension of some smugglers. Pakistan states that this is an instance of exercise of jurisdiction in the Rann by Maliya.

(*g*) Extract from report, 28 June 1941 of Mr. H. E. St.G. McClenaghan, Collector, Salt Revenue, Bombay, to Government on the Export Trade Control System in Kutch (Pak. Doc. B.214).

In this Report on the Export Trade Control System in Kutch, McClenaghan stated that Kesmari (Keswala) Bet, which is a large island in the Rann at a distance of about nine miles from Ghantila "is partly owned by Cutch and partly by Dhrangadhra". McClenaghan described Bhangarwa Bet in the Little Rann as "one of the outlying Dhrangadhra islands in the Rann" at a distance of six miles from "the Cutch island of Mardakh Bet". McClenaghan also stated that the island of Mota Wachhra, which is shown on the map as Wasra Selanky was in Radhanpur territory. "From here a good track for carts and camels passes through other Bets belonging to Radhanpur, reaching the Pung Bet after covering eleven miles. The Pung Bet belongs partly to Cutch and partly to Varahi". (Pak. Doc. B.214.)

(*h*) Radhanpur Administration Report, 1942–44 (Pak. Book 75/76).

"Its [Radhanpur's] western boundary, after touching Varahi, passes over portions of the Runn of Cutch ...". (Verbatim Records, p. 10861.)

(*i*) Morvi Administration Report, 1943–44 (Pak. Book 77).

"...On the North-West, the line defining the boundary of the Machhukantha territory bisects the Hansthal Creek and the Chach-Nes in the Inner Gulf of Cutch; ... on the North-East it runs along the centre of the Runn of Cutch equidistant from the Cutch and Morvi shores ...

"The surveyed area of the Machhukantha block is 822 sq. miles. Large tracts near the Inner Gulf of Cutch and the areas comprising the Morvi portions of the Gulf itself and of Runn have not yet been measured. Those areas are about 250 sq. miles ...". (Verbatim Records, p. 10861.)

India has produced other Administration Reports of Dhrangadhra (Ind. Docs.

TC 22, TC 23, TC 24, TC 25 TC 26), of Radhanpur (Ind. Docs. TC 27, TC 28, TC 29), of Morvi (Ind. Docs. TC 30, TC 31, TC 32) and of Malia (Ind. Docs. TC 35, TC 36, TC 37) which show that these States did not claim any part or portion of the Rann. India has also produced other editions of Memoranda on Indian States (Ind. Docs. TC 38, TC 39, TC 40, TC 41, TC 42, TC 43) for the same purpose. India has submitted as Indian Tabular Statement No. 10 a statement of description of Kathiawar Agency in the Bombay Administration Reports for the years 1871–72 to 1923–24 which show that the area of Kathiawar Agency is given without any reservation regarding the Rann. India argues, as regards Radhanpur Administration Reports produced by Pakistan, that they indicate that the western boundary of Radhanpur, "after touching Warahi passes over some portion of the Runn of Cutch". The boundary of Radhanpur must therefore be cutting across some little corner of the Rann, entering the Rann and again rejoining the land. Such description does not affect the statement that the entire Rann belongs to Kutch.

9. *Summary and General Argument*

The general arguments advanced by the Parties may now be set out.

Pakistan argues that the cited instances provide precedents for division of rights in the Rann of Kutch and establish that the Rann has been and is governed by the well established principles of the median line and of equitable distribution. During the period of British supremacy over the sub-continent, disputes between coastal States in relation to the Rann were resolved by drawing a line roughly midway between their shores. These precedents further establish that the islands in the Rann and the portions of the Rann between its shores and those islands have been and are governed by the principle of nearness of shores.

Pakistan submits that these precedents are clear evidence of the existence of a regional custom that the rights of the various coastal States extend to the middle of the Rann, equidistant from their respective shores.

> "The territories have so adjusted, it is in the nature of that area that whichever is accessible from whatever side, the side to which it is accessible has access to it and then begins to exercise jurisdiction. This is the custom; this is the usage. This is what has developed in that area. Call it a principle, call it custom, call it usage, call it what you will...". (Verbatim Records, pp. 3658/60–61.)

In each of these precedents, whether an enquiry as to the existing state of affairs or a resolution of a given dispute, the final outcome upholds the principle of contiguity and nearness of shores, and the median line emerges. Counsel for Pakistan states:

> "...when you start determining to which territory an island belongs, whether they formulate it in each case or not, the question is distances, rightly or wrongly applied, sometimes modified by access, and sometimes modified by usage... Ultimately the median line comes and decides the question; if the island lies on the boundary, it is split; if it lies on the side it is stated to depend on that side". (Verbatim Records, p. 3991.)

> "...in each case on its own particular facts it happens to be the median line... I submit the only conclusion would be that by custom, by usage in this area, the median line is the concept for the Rann and the nearness of shores for the islands". (Verbatim Records, pp. 4026–27.)

Pakistan further argues that the rules that by custom have been applied to the

Rann are in accordance with the dictates of natural law and in accordance with International Law.

In the submission of Pakistan, though these precedents relate to the Little Rann and the north-eastern part of the Great Rann, they are equally applicable to the entire Great Rann.

> "The point however, is that the Rann is the same on all sides... what is true of the one part is also true of every part." (Verbatim Records, p. 16016.)
>
> "The only thing left is ascertaining where, accurately, the middle of the Rann is, otherwise the boundary of Sind has always been in the middle of the Rann because of these various instances, principles which, I submit, do apply to the Rann, above all, usage and custom." (Verbatim Records, p. 4076.)

India denies that the instances relied upon by Pakistan in this Chapter establish any general or local custom, usage or principle.

The Report of Miles, India submits, says nothing about any principle.

> "On the face of it his Report is based not on some existing principle but on evidence collected by his Mehtas on a question of fact... You have these different instances which show that quite clearly the author himself drew some distinction between 'depends on' and 'belongs to'. Even in regard to 'depends on' you have a heading which says that it depends on one thing and secondly that it depends on another. The last instance I showed you dealt with dependence not on territory but upon people... Having all that in mind,... is it possible at all to say – and I submit that it is not – that a principle has been established or is illustrated by this as a concrete example whereby if it is a question of dividing the Bets in the Rann between the two parties they should be divided on the 'nearness of shores' principle? Alternatively, if it is not a question of dividing but of deciding to whom in fact they have always belonged... then you must take it that the Bets nearer one place belong to it, and those nearer to the other places belong to that." (Verbatim Records, p. 12702.)

Regarding Keswala incident, India says that no principle can be derived therefrom.

> "In the first place, nothing is said about a principle as having been an existing principle before, nor is it stated in the broad way... that there is some principle as laid down by Watson. All that is done is to say that here are people who have had and claim certain rights in this bet, in my opinion the proper way is to divide it half and half. It is an adjudication, it is a division, but it is not based on any principle that wherever there are two persons claiming, it must be divided half and half because that is a rule or, as has been put, a local custom, a custom of the Rann." (Verbatim Records, p. 12552.)
>
> "Colonel Jacob, after local inspection, enquiry and investigation, comes to the conclusion that the claim of Morvee is unfounded in fact; they have no such title to this part, so that is rejected. When it comes to Dhrangdra and Kutch; he says 'I think their claims are equally sustainable. One should take one portion and the other should take the other portion'. In other words, he rejects a part of the claim of each but he concedes a part of the claim of each – that is of Kutch and Dhrangdra.
>
> "Is this any authority for the proposition about the median line, the equitable distribution, the coastal States and the intervening marine feature being equally divisible between the two? I submit, not at all. Why was this investigation, enquiry and so on, necessary at all? There is no case of a median line and no such claim was made; no such proposition emerges from the decision." (Verbatim Records, p. 1593.)

Referring to the Poong Bet incident, India says that nothing is deducible from Keswala Bet and the situation is not in any way improved by the Poong Bet incident; it does not show any principle, it has not been decided in recognition of any principle which must apply to all bets in the Rann.

"...there is a heap of correspondence where the merits are all discussed and you will not find in it anyone saying, 'why bother about all this? There is a well-known principle to divide everything half and half between the two States'." (Verbatim Records, p. 12592.)

"They examined the claims; there were several claims...the merits have been gone into, the claims have been examined as a matter of fact, and the resultant division is by reason of what has been found as a question of fact, not by following any principle...". (Verbatim Records, pp. 12576/80.)

India says that Kennedy relied upon Watson and the Government Resolution of 1860 on the subject of Keswala Bet in support of his belief that the jurisdiction of the Rann was half and half.

"So in so far as Kennedy says that it appears from the Resolution, that of course is wrong. The Resolution does not mention any principle; it only confirms the opinion arrived at after long enquiry and personal inspection by Colonel Jacob...that...was a dispute...as to an island; there was no question there of Rann. What Kennedy did was to separate various interests...Kennedy does not say that there is a principle, he says he believes it to be the rule...He believes it on the strength of the Resolution...Then he refers to Colonel Watson. We do not know what Watson said...whether he said it relying on something else, as his own opinion, I am unable to tell you." (Verbatim Records, pp. 12622/3.)

The Nara Bet Resolution of 1897, India submits, is not quite clearly a decision based on proximity of the bet.

"...otherwise it would have been said, 'The proximity element shows that this island belongs to the Thakors of Suigam; therefore we say it is Suigam property'...if that had been said then one might say that some principle of proximity of shores as indicating ownership had been established; but ownership has been decided on quite a different factor, which is an independent factor, that there is no evidence to suggest that these islands belong to Sind". (Verbatim Records, pp. 10682–83.)

India argues that in any event these instances do not establish such a rule as to override other evidence.

"...do they establish such a rule that you will say that you will not look at the matter of 1935? You will not look at that which says 'the northern border of the Western Indian States'? You will not look at the 1914 Agreement and the line there. You will give all that the go-by because no doubt it occurred but you are of the opinion that there is an overriding custom which should overrule all that?...In 1914 there is an agreement which is quite contrary to custom, assuming a custom to exist...in 1935... here is a Paramount Power which could have relied upon a custom saying nothing of the kind that, so far as he is concerned, the boundary lies there between the Kutch State and his land.

"Can you say, because of this, that all that has to be wiped out...you have concrete evidence on the one side, whereas on the other side they have this very tenuous... suggestion of...some custom which, according to...[India], cannot be deduced at all". (Verbatim Records, pp. 12654–61.)

India asserts that there is nothing to support the principle of median line urged by Pakistan. But, on the other hand, events disprove the theory of the median line.

"...one of the legs of that median line is a supposition that the Rann is a marine feature...In any event it cannot be treated as a feature for which in international law there is any warrant for drawing a line down the middle. The supposition is...that line always so existed. If that is true, it is strange that none of the higher authorities ever knew of it or approved of it or recognised it, and went on approving and tolerating maps which indicated a line entirely inconsistent with a line down the middle of the Rann...[There

were] officials who thought that, prima facie, half the Rann belongs to Sind ... Nothing ever went to the top, and no-one at the top was ever conscious of this contention ... Only the Thar Parkar people on each occasion raised some question ... but ... the higher authorities did not countenance it". (Verbatim Records, pp. 15413–14/20.)

"... there is no comparison between the evidence which there is in favour of the line along the north of the Rann and what may be put forward as evidence in support of a median line ... There is no map which mentions it ... leaving aside ... the Collector and the Mukhtiarkar and so on, everyone has acted on the footing of the existence of a line which has the effect of putting the Rann within the territories of Kutch ... Maps, ... the Administration Reports ... most of the Gazetteers, the notes prepared by the Government of India and all the rest of them. When you take all that on one scale ... it is totally unaffected by anything that is said in favour of the median line ...

"All that we have here ... is someone saying that prima facie it should be the middle of the Rann; someone saying that you should continue to treat half the Rann as British territory; someone saying it is in the middle – there are certain spots in the middle; and someone saying ... that old people say that the border ran at a particular place and that the Amirs exercised jurisdiction up to this point ... They have not that quality which is required in law of continuity, repetition and antiquity altogether combined, which is one element proving the customary existence of a line or an existence recognised by custom". (Verbatim Records, pp. 12501–2.)

Emphasising the boundaries of Sind as described in Indian Documents A-35 and A-36 and the depiction thereof in Indian Map B-45, India says:

"Much has been said ... about the Secretary of State having written to say that it is not necessary to detail it [the boundary] because it is known and the Commissioners know their jurisdiciton. Therefore, it is said, it was deliberately left open as a bone of contention, so to speak, because there was the middle line and the Secretary of State, of all people, was conscious of the fact that there was a middle line. Was he conscious of the middle line, or was he conscious of that line which appeared in all the maps which were sent up to him?"

"When they create a province, they would certainly not leave the boundaries in a fluid state ... Mr. Butler quite rightly said, in this particular case the boundaries are clear. Now if it was an indefinite line – some kind of middle line – which might be here or there, it is not possible to say that the boundaries of the division of Sind are clear." (Verbatim Records, p. 11733.)

India says that there is no such principle as the principle of contiguity or the principle of "nearness of shore" in ascertaining the fact of existing sovereignty over bets in the Rann.

"As a matter of actual sovereignty following upon contiguity, there is no principle. It is only a matter of convenient allotment should it come to the question of some one having to allot and saying: Well, now to whom shall I allot this island? Not as a matter of existing sovereignty but as a matter of future sovereignty to be exercised: then it is a matter of convenience ...". (Verbatim Records, p. 12712.)

"If there had existed a well-known principle whereby what is nearer to a particular territory belongs to that territory then there is no reason why Dhara Banni should not have been included as a part of Sind ... [The maps] certainly do not show it as a part [of Sind]." (Verbatim Records, pp. 12793/10.)

As regards "equitable distribution" of the Rann, India says:

"Who is distributing it equitably? The very words 'equitable distribution' show that someone distributes the thing ... someone must have appl' l equity at some time. If it was not applied then, or at any earlier stage, and a distr ıtion in fact made on some equitable line, as it is said, then with respect it is not for this Tribunal to distribute it equitably because that means that you will draw a line which is not an existing line but which you think is a line which is fair, thereby equitably distributing the Rann." (Verbatim Records, p. 12512.)

Relying upon the following passage in Jenks, *Prospects of International Adjudication,* India argues that Pakistan has failed to establish regional or local custom regarding the Rann or the bets in it:

> "A party which relies on a regional or local custom must prove that the custom is established in such a manner that it has become binding on the other party in accordance with a constant and uniform usage practised by the States in question."

India points out that Jenks cites this proposition on the basis of the law laid down in the Colombian–Peruvian Asylum Case (Judgement of November 20th, 1950: *I.C.J. Reports 1950,* p. 266, at p. 267) and the Case Concerning Rights of Nationals of the United States of America in Morocco (Judgement of August 27th, 1952: *I.C.J. Reports 1952,* p. 176, at p. 200).

India says that the question of an interstatal custom between Kutch and Sind does not arise inasmuch as no Indian State could directly deal with another. A custom, general or local, says India, "is something which is deducible from a number of occurrences or events; something has been done in a particular way so many times that you can extract from it a principle". (Verbatim Records, p. 12552.)

India ends up its argument on custom with the following observations:

> "The question before the Tribunal is: is it by reason of any custom which applies generally, either as an international custom or a general custom, or a custom peculiar to a locality – that is, the Rann as a whole? The submission [India has] made is that you do not find anything to support it ... Ultimately, of course, it will be: are you satisfied, first, that these [instances] were based on any pre-existing custom, and secondly, if not, do the three of four things that have been mentioned in themselves constitute a sufficiently recurring pattern as between the states to justify an inference of a custom? ... really it is a question of what two parties have, by their conduct towards each other and by their agreements with each other and their relations with each other, accepted over a long period as a rule that should govern their relations ... Assuming at the highest – it is not a fact, I make that perfectly clear, but a pure assumption – that Kutch and Morvi had dealt with each other on a particular basis over a long period of years, as evidenced by a number of transactions from which you could draw some kind of inference of a custom as between them, it does not necessarily follow that that is a custom which would apply as between Kutch and any other State or between Morvi and any other State, or between Kutch and the British. That is the first thing. The second thing is that custom arises in two ways: either by way of two entities, two parties, have dealt with each other over a long period and acted on a particular footing ... or it may be a series of judgments of a Court which has jurisdiction which has laid down a particular rule, or that a rule can be deduced by looking at a series of the Court's judgments, that the Court has throughout acted upon a particular principle as a principle, not ad hoc in each case, but it is to be deduced from their judgments. As an extreme argument only, I am putting it to the Tribunal that where it is a suzerain Power which has the right to decide as between itself and a vassal State, a less than vassal State, even if it has decided on two occasions in a particular manner there is no binding force, because that Power may itself in a third case, for political considerations or otherwise, decide quite differently. When you are then concerned, as we are here, with a suzerain Power and a less than vassal State, can you say that there is any such thing as a custom by which the suzerain Power would be bound? The very basis of the argument is that the suzerain Power was at large, therefore its decisions – which are, admittedly, quasi political – could not give rise to any inference of custom." (Verbatim Records, pp. 12822–23.)

India also denies that the instances relied upon by Pakistan can have any relevance to the Sind–Kutch boundary in the Great Rann:

> "However, ... [Keswala Decision and Kennedy Report] are not concerned with Great

Rann: they are concerned with Little Rann to the east where there were long standing disputes over the years between rival Indian States ... Any adjudication on those long standing disputes between rival Indian States can afford ... no guidance and form no precedent when the question is between Sind and Kutch in the Great Rann."

India further points out:

"All the Indian States which claimed any of these bets are admittedly part of India. Therefore, whether it belonged to Kutch or whether it belonged to Morvi or whether it belonged to Wao or Suigam, is a matter of no relevance, because all the States were merged into India. The important point is that not one of the items pertains to a dispute between an Indian State and British India, Sind, or any other part." (Verbatim Records, p. 1677.)

Counsel for Pakistan says:

"My learned friend has also made the point and said that these were findings of facts which reflected no principles ... I most respectfully agree. That is the very point I am making. I am not saying that someone had an abstract rule by which he was going about dividing, I am saying that there was an existing state of affairs which was found as a fact." (Verbatim Records, p. 16235.)

"But my whole submission is, make an enquiry, find out, you will find it as a fact, as an existing position, that the coast that is nearest has the rights. That will be not by application of some principle from outside, that is the very compulsion of the nature of the area; the dependence of these bets upon the territories nearest will compel this particular result to take place. Investigate it and you will find it." (Verbatim Records, p. 16481.)

So far as the relevance of these various precedents to the present dispute is concerned, Counsel for Pakistan replies:

"[India states] that these are disputes between the States; therefore, there is no analogy for the present purpose ... anyhow, they are now a part of India ... Here is a question of Sind versus India, and all these disputing states of the past are now merged in India so the relevance is gone ... Here I would merely submit for the purposes of those principles themselves that if, in a dispute, a certain issue is crystallised and a decision is reached, the value of that decision does not disappear merely because that party changes its status, or dies, or merges into somebody else. The principle is there ... Nobody has tried to explain why the fact that they are now a part of India destroys their value as precedents ...". (Verbatim Records, pp. 3601–2.)

Pakistan argues that a certain custom, usage or principle has developed in the region, due to the very nature of the Rann, that the right of the coastal States extend equidistant from their shores. Pakistan further states that if juridical rights have been derived from a certain view of natural facts and relations have been conducted on that basis, then it is not relevant at a subsequent stage to enquire whether the view of natural facts that was taken is in accordance with later theories. Pakistan also cites the following passage from the Island of Palmas case:

"Both Parties are also agreed that a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or fails to be settled." (*United Nations Reports of International Arbitral Awards*, Vol. II, p. 831, at p. 845.)

Pakistan argues from this that a juridical fact is to be judged in accordance with the state of law at that time and not in accordance with the notions that might exist as to what the law is or should be at a later stage.

Pakistan also states that the real point which emerges from these various precedents is that the whole Rann did not belong to Kutch. Pakistan states:

"If Kutch claims that the whole Rann belongs to Kutch and has always done so from time immemorial then how does the question arise of people wanting to investigate ... and of people from other coasts having rights? How do those questions arise and why does nobody on behalf of Kutch say, 'why are you wasting your time, this is an immemorial title'? " (Verbatim Records, pp. 16475/80.)

India says:

"... when we talk of the Rann belonging to Kutch it means, if three miles of Rann belong to a particular State, Wav or Suigam, the authority of our point is not disturbed thereby. It only shows maybe there were some exceptions". (Verbatim Records, p. 1682.)

India adds that "by and large" the whole of the Rann belonged to Kutch. On the other hand, Pakistan states that the admission by India that some portions of the Rann did not belong to Kutch contradicts the position taken by India at all times before the submission of the Indian Memorial that the entire Rann belonged to Kutch. The fact that coastal States possessed portions of the Rann as well as islands, in it demonstrates that descriptions in some Administration Reports and Gazetteers that the whole of the Rann was a part of Kutch were inaccurate. India has attempted to save the positiveness of those descriptions, by a shift in its position, by stating that the reference is to the Rann "by and large". But how much is "by and large"? By which criterion are those portions of the Rann which are not covered by the indefiniteness of this formula distinguished from those that are? After an examination of the portion in the north-east Rann, the cases of Poong and Keswala, and the findings of Miles and Kennedy, the description "by and large" gets reduced to exactly half in the area in question.

CHAPTER VII: CERTAIN NON-CARTOGRAPHICAL EVIDENCE

1. *Introduction*

This Chapter deals with the evidence, not discussed in other Chapters, which has a bearing on the rival contentions of the Parties relating to the extent of Sind and Kutch. Such evidence consists of historical and other works, accounts of travellers, Administration Reports, Statistical Reports, Gazetteers and Official Reports, memoirs, notes and statements.

The implications of this material are not always patently uniform or consistent and have given rise to arguments on both sides regarding their true meaning and effect. Some of the documents are relied upon by India as showing that Sind and Kutch were conterminous and that the conterminous boundary lay as claimed by India; Pakistan relies upon some references as indicating that the Rann is a separating entity lying between Sind and Kutch. Some documents describe the Great Rann as bounding, surrounding, sweeping round, or bordering Kutch, while some others use similar expressions regarding Sind, and the Parties seek to construe these descriptions differently. A large number of Administration Reports, Statistical Reports, Gazetteers and some other documents describe the area of Kutch as "exclusive of the Rann", and India contends that they establish that the Rann was a part of the territory of Kutch; according to Pakistan, several documents prove that Sind extended down to the 24th degree of north latitude while Kutch did not extend beyond that parallel. Some documents specifically refer to certain places and these are sought to be construed by the Parties as indicative of the extent of the territory of Sind and Kutch. Though it is not the case of either Party that the Rann is a "no man's land", a few documents describe the Rann as such.

It is convenient to discuss this material and the arguments of the Parties in respect thereto in the form of an analysis.

2. *The Rann as an Entity Separating Sind and Kutch*

According to Pakistan, the Rann, being a marine feature, is described and depicted as separating coastal territories. The references relied upon by Pakistan in this connection are dealt with in this section.

India's answer, generally, is that the Rann is not a marine feature and that the suggestion of the Rann being a separating entity is inconsistent with the Agreement of 30 June 1965 which necessarily implies that India and Pakistan adjoin each other; it is also inconsistent with the case of Pakistan that Sind extends down to the 24th parallel.

Pakistan replies that the Indian objection is based on a misconstruction of the Pakistan position which is that, the true nature of the Rann being other than land, the Rann is not shown as included in the land of either State. This is

neither inconsistent with the case of Pakistan that Sind extends down to the middle of the Rann, nor with the Agreement of 30 June 1965.

(*a*) Williams, *A Topographical Memoir on Parts of the Western Frontier of India from Information Collected in the Years 1809–1810* (Ind. Doc. A-11):

Williams was the Surveyor-General, Bombay Presidency. Pakistan has quoted his statement that Kutch may not improperly be denominated an island in consequence of the Rann which lies along the whole line of its north side and divides it from the eastern side of Gujarat. India's comment is that Kutch has often been referred to as an island because the Rann goes all round it; the statement of Williams is purely descriptive.

(*b*) MacMurdo, *Memoir on the Province of Kathiawar, accompanied by Remarks on the Runn of Kutch, 1815* (Pak. Book 2):

At page 184, MacMurdo says "The Runn, which separates Cutch from Kathiawar" and at page 176 he describes the Rann as dividing Kathiawar from Gujarat. MacMurdo was appointed Agent for Kutch affairs in 1812 and was Resident in Kutch from 1816 to 1820. Pakistan argues that the aforesaid statements make it quite clear that the Rann is neither Kutch nor Kathiawar and these statements were made by a person with personal knowledge.

India's comment is that the references are to the Little Rann – which is separating in the sense that it lies between the mainlands of Kutch and Kathiawar; the statements merely describe the features and characteristics of the Rann.

(*c*) Treaty of 1816 between the East India Company and Kutch (Pak. Doc. A.2) and its interpretation by MacMurdo in 1816 (Pak. Doc. B.272) and by Hamilton in 1820 (Ind. Doc. CCC-2):

Article 4 of this Treaty barred Kutch, as well as the other coastal States concerned, from crossing the Rann for hostile purposes. The Treaty also described Lakhpat as being on the borders of Sind. MacMurdo, the author of this Treaty, reporting to the British Government, explained that Article 4 reflected the objects of the British Government in entering Kutch and that he had few scruples "that the allied Governments should consider the Run and Gulph as their boundary" (Pak. Doc. B.272). Similarly, Hamilton stated that, by the Treaty of 1816, the Rao of Kutch "fixed the Runn and Gulf of Kutch as the eastern boundaries of his principality" (Ind. Doc. CC-2, p. 591).

(*d*) MacMurdo, Resident at Anjar, *An Account of the Province of Cutch, and of the Countries lying between Guzerat and the River Indus, 1820* (Pak. Book 18):

Pakistan states that in the concept of MacMurdo also, like Rennell, the Great Sandy Desert lay to the north of Kutch, and the Great Rann was the southern portion of this desert. Pakistan relies on the following passage:

> "The boundaries of Cutch are defined by nature in a more decided manner than those of almost any other country... On the west is the easternmost branch of the Indus, and a barren waste of many miles dividing Cutch from Sindh; on the east is the Gulf of Cutch and the Salt desert called Run; on the north is the Sandy desert, while the sea washes the southern shore of the province." (p. 205.)

India states that the above passage should be read to mean that the sandy desert, i.e., Thar, is described as lying to the north of Kutch and thus the description includes the Rann in the territory of Kutch. Pakistan argues, on the contrary, that MacMurdo considered the Rann as the southern portion of the Great Desert, and quotes MacMurdo, as follows:

> "The Desert, properly speaking, lies between Parkur and the borders of Sindh and the Pooran river. It commences on the north-west border of Cutch in a flat sandy run, and soon assumes the Thull or hilly appearance, which it retains as high as Amercote...". (*Op. cit.*, p. 237.)

Pakistan also relies on the following passages from MacMurdo as showing that the Rann was not considered to be a part of Kutch:

> "Cutch is insulated from every other country by water during the monsoon months, and in the fair weather by a desert tract varying from four to sixty miles in breadth. The whole of the northern frontier during the S.W. monsoon is covered with water, generally salt,...". (*op. cit.*, p. 205.)
>
> "... Jharra, which borders on the desert dividing Cutch from Sind". (*Op. cit.*, p. 208.)
>
> "Along the north boundary, and skirting the desert, is a tract of land called the Bhunni; it extends directly along the northern frontier of Cutch...". (*Op. cit.*, p. 208.)

Pakistan has also produced Pakistan Map 130 prepared by MacMurdo which depicts the Great Rann as a part of the Great Sandy Desert. According to Pakistan, this map sets at rest any controversy that by the Sandy Desert, MacMurdo meant the "Thull" desert.

(*e*) A. Burnes, Assistant Quarter Master General, Kutch, *A Series of Original Papers on Cutch and Countries Adjacent, illustrative of Antiquities, Curiosities, Customs, History and Topography, 1825–28* (Ind. Doc. A-6):

In describing the situation of Pachham; Burnes says that the Great Rann is an "impenetrable barrier" between Pachham and Sind.

(*f*) A. Burnes, *Travels into Bokhara, 1834,* Vol. III (Pak. Book 29):

Burnes describes the "Grand" Rann of Kutch as "that part which lies between Sinde and the islands of Puchum and Khureer".

Pakistan relies on the following passages from the writings of Alexander Burnes as confining the limits of Kutch to its mainland:

> "The North western part of the Province is almost without fresh water for in a distance of fifteen miles from Narra to Moordan, on the road to Lucput, the Burkan river is the only drinkable water...".
>
> "The frequent occurrence of brackish water on the Northern frontier of Cutch might be attributed to the vicinity of Runn...". (Ind. Doc. A-6, p. 88.)
>
> "The village of Ballyaree is situated across the Runn in the Thurr, nearly 80 miles North of Bhooj, but the Province of Cutch extends no farther than the first seventeen miles." (*op. cit*, p. 91.)
>
> "... I have since minutely examined the whole northern frontier of Cutch bordering on its [the Rann's] banks...". (Ind. Doc. A-5, p. 20.)
>
> "It will also be observed that the peculiar conformation of the North-Eastern part of Cutch at Bheyla...". (*Op. cit.*, p. 32.)
>
> "Moreover, the whole Northern face of Cutch bordering on the Runn from Lucput to Bheyla...". (*Op. cit.*, p. 36.)

(*g*) Letter from the Governor of Bombay Mountstuart Elphinstone to the Amirs of Sind, 3 January 1820 (Ind. Doc. A-90).

Pakistan relies on the following passage as showing that Kutch ended on the southern edge of the Rann:

> "On the termination of these operations against the Khosas, the British troops... will retire within the Cutch or Kattywar frontier." (Ind. Doc. A-90, p. 238.)

(*h*) T. Postans, *Personal Observations on Sindh, 1843* (Pak. Book 16):

Postans was an Assistant to the Political Agent, Sind, and Baluchistan. He says "...the desert tracts which intervene between it [Sind] and the Province of Kutch...". (p. 1.)

(*i*) Le Grand Jacob, *Report on the Province of Kathiawar, 1844* (Pak. Book 7):

Jacob, who was Assistant Political Agent, Kathiawar, writes that a narrow Rann separated the District of Okhamundul (in Kathiawar) from the rest of the Kathiawar peninsula.

(*j*) Letter, dated 17 March 1853, from Lieut.-Col. Raikes, Deputy Collector and Magistrate, Thar Parkar, to the Commissioner in Sind (Pak. Doc. B.176):

Raikes describes Parkar and Wagur as separated by the Rann; he also says that the two Provinces of Sind and Kutch were divided only by the Rann of Kutch. India's explanation is that the word "divided" is obviously used in a purely geographical sense.

(*k*) Selections from the Records of the Government of Bombay, No. XL -- New Series, Papers Regarding the Revenue Settlement Effected in the Districts of Omerkot and Thurr, 1856 (Pak. Book 17):

This volume contains a letter, dated 21 January 1856 from H. B. E. Frere, Commissioner in Sind, to the Governor of Bombay, in which Frere stated that the Rann separated the Thar and Parkar Districts from Kutch, that Parkar was separated from the open portions of northern Gujarat by the Rann and that it was completely separated from Kutch by the Rann. (pp. 37–38.)

(*l*) Preface dated 1 March 1865, by Major A. Y. Short, Political Agent, Kutch, to a Memorandum (Pak. Doc. B.300):

Short describes Kutch as constituting an island, "separated on the north and east from the continent of India by the great Runn of Kutch". India points out that the same Preface also says that the area of Kutch, excluding the Rann, is estimated at 6,500 square miles, indicating that the Rann was included in Kutch. To this, Pakistan answers that if the same author makes two statements in a document, the normal way of looking at them would be that the meaning should be given which retains some effectiveness for both. If one were to read the two statements together, they mean that the area of the mainland is 6,500 square miles and there are parts of Kutch called Rann at that time – the Banni and the Pachham; Kutch is in two parts, the Rann part and the mainland part, and that the area given is exclusive of the Rann part, i.e., exclusive of the Banni and the Pachham.

(*m*) Wynne, *Preliminary Notes on the Geology of Kutch, 1869* (Pak. Book 10):

Wynne, a geologist, observed that Kutch "is bordered on one side by the Arabian Sea and the Gulf of Kutch while upon all others it is isolated from the

mainland and the Thurr or Little Desert by the grand and smaller runns". (p. 52.) India points out a subsequent statement made by Wynne that the area of Kutch, including the Rann, is estimated as being equal to about half that of Ireland and adds that the area of the mainland of Kutch is about 6,500 square miles, that the area of the Rann is about 9,000 square miles, and that thus the total area of Kutch is about 16,000 square miles – which is half the area of Ireland. (*Op. cit.*, p. 52.) To this, Pakistan replies that, since Wynne was a geologist, his prime interest was not in political divisions and this observation does not necessarily mean that politically all the area included must belong to the sovereignty of Kutch. Wynne gave the figure on the basis of some papers he consulted, and when he wrote his final Report, there was a significant change and he did not express himself in the same terms. In the final Report, which appears in the *Memoirs of the Geological Survey of India*, Vol. IX (Pak. Book 20), Wynne seems to have taken the trouble to verify his facts and states that Kutch has an area, including its "detached islands" (reference being to Pachham and Khadir), of 6,608 square miles, while the Rann is estimated to contain about 10,000 square miles, inclusive of the Banni. Pakistan also points out that the final Report further states that Chorar does not come within the political limits of Kutch. (p. 5.) India rejoins by observing that, though Wynne was a geologist, one cannot argue that when he says what he says he means something else; he makes a statement as to the area and he certainly means it politically. The relevant passage from the final Report also refers to the Rann as a part of Kutch and is consistent with the earlier statement about the area being equal to the area of half of Ireland. (*Op. cit.*, p. 5.)

(*n*) Black, *Memoirs on Indian Surveys, 1875–90* (1891) (Pak. Book 14):

Referring to the Rann, Black says "this remarkable tract... consists of sandy waste and salt beds separating Cutch from the Province of Sind". (pp. 85–86.)

(*o*) *The Imperial Gazetteer of India* Vol. XI, 1908 (Ind. Doc. C-28):

This Gazetteer, in describing the Rann of Kutch, states that it stretches "along the north and east of the State of Cutch which it separates from Sind on the north and from Radhanpur and Kathiawar on the east and south". (pp. 84–85.)

(*p*) Letter, dated 10 February 1925, from the Deputy Inspector General of Police for Sind to the Commissioner in Sind (Pak. Doc. B.383):

The letter says that Kutch and Kathiwar are separated from the Thar Parkar District by the Rann of Kutch.

(*q*) Selections from the Records of the Government of Bombay, No. XI – New Series. Papers regarding the Revenue Settlement Effected in the Districts of Omerkot and Thurr etc. (1856) (Pak. Book 17).

Pakistan relies on the following observations made by the Acting Commissioner in Sind:

> "This district [Thar Parkar] is in fact... as much separated from Kutch by the Runn as if the sea there still covered its former bed. In fact it is even more completely separated from Kutch than if the Runn were still covered by the ocean, for in that case the communication by boat would assuredly... be more than it now is across the salt swamp of the Runn." (p. 89.)

(*r*) Report of Captain W. Havelock to the Chief Secretary to the Government of Bombay, 21 February 1827 (Ind. Doc. A-15).

Pakistan places reliance on the following passages from Havelock:

"About five kos of equally good road [from Bundiana] brought us on the boundary, and two more to the town of Khourah . . .". (p. 18.)

"The Thakor and my Jamedar differed so widely on their accounts of the surrounding country that curiosity led me to take a look at His Highness the Rao's frontier." (p. 154; Supp. Vol.)

Pakistan states that Havelock made a tour of the limits of Kutch along the southern edge of the Rann and referred to this area as the "Runn Frontier". India argues, on the other hand, that such description is not capable of being construed as limiting the territory of Kutch. The Rann was not a place on which a frontier post could be established and the references made by Havelock are to places "along a defensible frontier". These were posts on what Havelock regarded as the frontier for defensive purposes, and such description does not necessarily exclude an untenable portion from the territory of Kutch. To this, Pakistan replies that India looks at descriptions of Kutch confined to its mainland in one light, and descriptions of Sind confined to its mainland in another. India forgets that the southern edge of the Rann can be considered as much a natural boundary as the northern edge.

(*s*) Walter, *Brief Sketch of the History of Kutch, 1827* (Ind. Doc. C-4).

Pakistan relies on the following passage as descriptive of the border of Kutch:

"The Sindian army being fully prepared, quitted Hyderabad, accompanied by Ghoolam Shah and Poonja Sett; and so confidently was the idea entertained by the easy conquest of Kutch, that an immense body of followers, attracted by the hope of plunder, accompanied the troops, which together, on their arrival on the borders of Kutch, amounted to 70,000 men. The Sindians having crossed the Runn, after a march of eighteen coss arrived at Narrah . . .". (p. 97.)

(*t*) Letter from the Political Agent in Kutch to the Secretary to the Government in Bombay, 24 March 1877 (Pak. Doc. B.307) and Resolution No. 1913 of the Bombay Government, 29 March 1877 (Pak. Doc. B.308).

These documents, which consist of correspondence between the Political Agent, Kutch, and the Government of Bombay, describe Khavda, on the mainland of Kutch, as the northern limit of Kutch.

The position which Pakistan takes regarding these references is that admittedly the Rann is a strong geographical entity with an individuality of its own which does separate the two provinces and it separates them in the sense that the boundary of the two provinces in it is to be found on other evidence. The Rann is itself the boundary between territories that it separates – its whole width forms a broad belt of boundary between territories on opposite shores. The sovereignty of each coastal territory extends into the Rann up to a limit where an equal extension of sovereignty from the opposite coast meets it.

The general comments of India on the various references which say that the Rann divided or separated Sind and Kutch are that when one is looking at the Rann as a matter of geography, at the physical features, one says "This lies between A and B", bearing in mind that the Rann has particular features which make it recognisable as a unique area of its kind. The reference cannot be interpreted as meaning that politically it was a part neither of Kutch nor of Sind.

3. *The Rann as an Entity Bounding Kutch*

Pakistan relies upon the references hereinafter dealt with to show that the Rann bounded, surrounded, swept round Kutch; the inference which Pakistan seeks to draw from these references is that the Rann did not form a part of Kutch as contended by India.

India points out that such an inference would be clearly contrary to the admitted case of Pakistan that at least half the Rann belonged to Kutch. According to India, no such inference can be drawn from these references which merely indicate that the Rann has, by reason of its special characteristics, an individuality of its own.

Pakistan replies that the case of Pakistan is that the northern half of the Rann belongs to Sind. Pakistan has not taken upon itself the onus of proving that the southern half belongs to Kutch. The case of Pakistan that the northern half of the Rann belongs to Sind is not inconsistent with the statement that the territories of Kutch in 1819 did not include the Rann as claimed by India.

(*a*) Williams, *A Topographical Memoir of Parts of the Western Frontier of India from Information Collected in 1809–10* (Ind. Doc. A-11):

The following passages from Williams, giving an account of his observations made in 1809–10, are relied upon by Pakistan:

> "In consequence of the insular condition of Kutch created by the Rann...". (p. 130.)
>
> "The whole tract [Kutch] may not improperly be denominated an island, in consequence of the extensive tract of Runn which lies along the whole line of its north side...". (p. 131.)
>
> "...Futteh Mahomed's troops who occupy northern Kutch. From Sindra to Nurrah, on the northern frontier of Kutch...". (p. 133.)

(*b*) Letter, dated 25 August 1866, from the Rao of Kutch to the Governor of Bombay (Pak. Doc. B.305):

In a representation made by the Rao of Kutch regarding the Kutch-Morvi dispute, the Rao observed that the Treaty of 1809 was entered into between the British, the Gaekwar and the Kutch Governments, and by it "the Gulf and Rann are laid down as the boundaries in these directions". The Rao further said in the Representation: "...I declare that by the Treaty of A.D. 1809 contracted between the three governments, and which lays the Gulf and Runn to be the boundaries...". Pakistan says that the Rao thus expressly acknowledged that the Rann constituted the boundary separating the Gaekwar's dominions from his own; it is a straight clear admission to the effect that "our boundary is the Runn".

(*c*) Hamilton, *The East India Gazetteer, 1815* (Pak. Book 28):

This Gazetteer describes the Rann thus: "A very extensive salt morass, which bounds the western frontiers of the Gujarat Province, communicates with the Gulf of Cutch, and exhibits a great variety of aborigines... Including the windings it extends many hundred miles, and sweeps round the north of Cutch". (p. 707.) Pakistan comments that, under the Kutch entry, the Gazetteer says that Kutch is bounded by the sandy desert but, under the Rann entry, it says the Rann sweeps round the north of Kutch: thus two not entirely consistent notions are present (*op. cit.*, p. 322).

(*d*) MacMurdo, *An Account of the Province of Cutch, 1818* (Pak. Book 18): MacMurdo has made the following statements in his Account:

"The boundaries of Cutch are defined by nature ... On the north is the Sandy desert ...". (*Op. cit.*, p. 205.)

"The whole of the northern frontier (of Cutch) during the S.W. monsoon is covered with water ...". (*Op. cit.*, p. 205.)

"... Jharra, which borders on the desert dividing Cutch from Sindh". (*Op. cit.*, p. 208.)

"Along the north boundary and skirting the desert, is a tract of land called the Bhunni." (*Op. cit.*, p. 208.)

"The Desert ... commences on the north-west border of Cutch in a flat sandy run ...". (*Op. cit.*, p. 237.)

"The limits of Kutch to the north are not accurately defined, but it may be estimated at 110 miles in length, by 70 the average breadth." (*Op. cit.*, p. 322.)

The comments of India and Pakistan appear in Section 2 (*c*).

(*e*) Kennell, *Memoir of a Map of Hindoostan or the Mogul Empire, 1792* (Pak. Book 107).

Pakistan states that Rennell, and some other writers who followed him, conceived of the "Great Sandy Desert" as extending from the confines of Multan down to, but excluding, the territory of Kutch. The Great Rann was treated by these writers as the southern portion of the "Greaty Sandy Desert". In support of this argument, Pakistan cites Rennel as follows:

"A sandy desert bounds Sindy on the east, and extends the whole way from the territory of Cutch, to the confines of Moultan, being near 550 B. miles in length, and from 100 to 150 wide." (*Op. cit.*, p. 183.)

Pakistan points out that Pakistan Map 106, prepared by Rennell in 1788, clearly brings out that Kutch lies to the south of the "Great Sandy Desert". The word "Cutch" is spaced over the southern-most portion of that desert, to the south of the 24th parallel. Pakistan also relies on the following passage from Rennell:

"It is possible that the river formed by the Caggar ... may discharge itself by one or more of these openings; unless it loses itself in the sands of the desert, which borders on the north of Cutch." (*Op. cit*, pp. 185–6.)

(*f*) Frere, *Notes on the Runn of Cutch and the Neighbouring Region, 1870* (Pak. Book 11).

Frere's concept of the "Sandy Desert" is similar to that of Rennel and MacMurdo. Pakistan relies on the following passage from Frere as excluding the Rann from Kutch:

"The length of this tract [the "Sandy Desert"] measured in a slightly curved line from the hills of Cutch to the northern borders of Thurr ... is nearly 500 miles ... To the south the hills of Cutch bound the flat plain of the Runn." (p. 11.)

(*g*) Hamilton, *A Geographical, Statistical and Historical Description of Hindoostan and Adjacent Countries*, Vol. I, 1820 (Ind. Doc. CC-2):

In this work of 1820, Hamilton describes the Rann as in his *Gazetteer* of 1815 (Pak. Book 28): The Rann "sweeps round the northern side of that province (of Cutch)". (*Op. cit.*, p. 593.) Pakistan says that, if the Rann sweeps round the northern side of Kutch, then in that sense it is not a portion of Kutch.

(*h*) Letter, dated 21 January 1820, from Captain J. MacMurdo to the Amirs of Sind (Ind. Doc. A-92):

In this letter, MacMurdo observed: "... the Honourable Company's Government, in adopting the resolution of entering that district (Parkar), has no design of extending its frontier beyond the natural limits of the Runn, which bounds Guzerat and Cutch, ...". Pakistan construes this observation as an assurance that the Rann is a natural barrier, which bounds Gujarat and Kutch and that the British would be confined to their own frontier which is bounded by the Rann.

India's comments are as follows: The observation is in two parts. In the first part, it says that the British do not wish to extend their frontier beyond the natural limits, implying that the natural limits of the Rann are the frontier - - the whole of the Rann. This was not a British frontier but the frontier of States which they were protecting. In the second part, the words "which bounds Guzerat and Cutch" are merely a description: the Rann runs along the boundary, outside of Gujarat and Kutch, but at the boundary; that constitutes the frontier, and the British did not wish to go beyond the limits, which must mean the northern edge of the Rann.

(*i*) Letter, dated 11 March 1823, from Major W. Miles, to J. Williams, Resident at Baroda (Ind. Doc. A-87):

In this letter, Miles observes: "Opium is said to be carried through the Run to Sindh, Kutch and Jhallawara."

(*j*) A. Burnes, *A Memoir and Supplementary Memoir of a Map of the Eastern Branch of the Indus, 1827–28* (Ind. Doc. A-5):

Burnes says in his Memoir that he had minutely examined "the whole northern Frontier of Cutch bordering on its [the Rann] banks, as well as the different islands in it". (p. 60.) Pakistan says that this statement shows what the northern frontier of Kutch was. At another place, Burnes says "the whole northern Face of Cutch bordering on the Runn from Lucput to Bhela, with the exception of a few miles here and there, presents either a rocky or elevated bank ...". Pakistan's comment is that "the whole Northern Face of Cutch" is the one extending from Lakhpat to Bela and its further definition is "bordering on the Rann"; so, Kutch borders on the Rann and the Rann bounds Kutch.

(*k*) Lyell, *Principles of Geology*, Vol. I, 1820 (Pak. Book 19):

Pakistan quotes the following passage: "The Channel of the Runn, which extends from Luckput round the north of the province of Cutch, was so much sunk (by the earthquake) ...". (p. 406.)

(*l*) M. Postans, *Cutch, or Random Sketches of Western India, 1839* (Pak. Book 4):

Mrs. Postans describes the Great Rann as "a desert salt plane which bounds Cutch on the north and east ...". (p. 90.)

(*m*) Raikes, *Memoir on the Kutch State, 1854* (Ind. Doc. C-3):

In describing the Province of Kutch, Raikes has said: "... it is bounded on the north, east, and south-east by the runn; on the south and south-west by the Gulf of Kutch and the Indian Ocean". (p. 3.) Pakistan argues that the Rann is thus a bounding entity.

(*n*) *The Imperial Gazetteer of India,* Vol. XXII, 1908 (Pak. Book 35):

This Gazetteer describes the whole territory of Kutch as "almost entirely cut off from the continent of India – north by the Great Rann, east by the Little Rann, south by the Gulf of Kutch and west by the Arabian Sea". (p. 326.) Pakistan says that the description speaks of Kutch as an island, cut off, separated, isolated, et cetera.

(*o*) *The Imperial Gazetteer of India,* Vol II, 1909, Provincial Series, Bombay Presidency (Ind. Doc. C-29):

The Gazetteer speaks of the whole teritory of Kutch as "almost entirely cut off from the continent of India – north by the Great Rann, east by the little Rann". (p. 326.)

With regard to those references which describe the Rann, Gulf and the Indian Ocean as bounding Kutch, Pakistan's arguments are: the Rann is one of the bounding entities. No one maintains that the Gulf and the Indian Ocean are also included in Kutch. The Rann sweeps round the mainland of Kutch as a belt of varying width isolating it as an island from the mainland of the Indo-Pakistan sub-continent.

According to India, the expression "bordered by the Rann of Kutch" is used not only with reference to Kutch, but also with reference to Sind. That being so, the phrase cannot be interpreted to mean that politically the Rann was neither a part of the one nor a part of the other. It is a question of English. Often, wherever there is an indication that the Rann is a part of Kutch, it is also said that Kutch is bounded by the Rann. That is a natural thing to say because it has the Rann on all sides of it. The suggestion that the Rann belongs to Kutch is not diminished by the fact that the words used are that it is "bordered by the Rann". The phrase does not signify that the territory of Kutch ends at the Rann. Words suggesting that Kutch is insulated by the sea at certain times, that it is an island, et cetera, are not intended to be exact definitions. They are the definitions of persons writing Memoirs, Papers, etc., for learned Societies which are concerned with their personal impressions of the people and of the territory generally rather than with the ascertainment of political boundaries. They may be concerned with physical features. The words "bounded by, surrounded by" are merely a description of the isolation of Kutch by reason of certain natural features. When the words "surround", "isolated", "bordered" by the Rann are accompanied by a description, the description is the correct one and the words are a pure geographical picture drawn of the actual isolation of Kutch.

4. *The Rann as an Entity Bounding Sind*

In support of the statement that there are also references saying that Sind is bounded by the Rann, India relies upon the material listed below. It may be noted here that Pakistan's general stand is that the Rann stands in an identical relationship to all the coastal States.

(*a*) Selections from the Pre-Mutiny Records of the Commissioner in Sind, 1847 (Ind. Doc. CC-1):

> "The Hyderabad Collectorate is bounded...on the south by the Runn of Cutch." (p. 39.)

(*b*) Annual Report of the Sind Revenue Survey for 1869–70, Left Bank (Ind. Doc. TA-56):

"The tract surveyed in District Shahbunder consists of one entire Talooka and a portion of another ... It is bounded ... on the East by District Mahomed Khan's Tanda and the Runn of Cutch."

(*c*) General Report on the Administration of the Bombay Presidency for the Year 1872–73 (Ind. Doc. CCC-6):

(i) Sind: "The province ... is bounded on the south by the Ran of Kachh and the Arabian Sea." (p. 108).

(ii) Hyderabad: "The district is bounded ... on the south by the Ran of Kachh and a portion of Karachi Collectorate." (p. 112.)

(iii) Karachi: "The district of Karachi ... is bounded ... by the river Indus and the Ran of Kachh on the east;" (p. 113.)

(iv) Thar Parkar: "These districts are bounded on the south by the Ran of Kachh." (p. 115.)

(*d*) Hughes, *A Gazetteer of the Province of Sind*, 1874 (Pak. Book 49):

(i) "The Province of Sindh is bounded ... on the south by the Rann of Kachh and the Indian Ocean ...". (p. 1.)

(ii) Thar Parkar: "It is bounded ... on the south by the Ran of Katchh." (p. 817.)

(*e*) *A Gazetteer of the Province of Sind*, 1876 (Ind. Doc. C-9):

(i) "The province of Sind is bounded ... on the south by the Rann of Kachh and the Indian Ocean." (p. 1.)

(ii) Thar Parkar: "It is bounded ... on the south by the Rann of Kachh." (p. 842.)

(*f*) Report on the Administration of the Bombay Presidency for the Year 1882–83 (Ind. Doc. C-41):

Thar Parkar: "The Ran of Cutch borders the south." (p. 66.)

(*g*) Letter, dated 16 May 1884, from the Collector of Hyderabad to the Deputy Superintendent, Survey of India (Pak. Doc. B.365):

"The 1 mile to the inch maps of the Revenue Survey of India however clearly show (*vide* Sheets 91 & 92) that the Tando Sub Division of my district borders on the Runn of Cutch."

(*h*) Report on the Administration of the Bombay Presidency for the year 1892–93 (Ind. Doc. C-19):

(i) Hyderabad: "It is bounded ... on the south by the Runn of Cutch." (p. 118.)

(ii) Thar Parkar: "The Runn of Cutch borders the south ...". (p. 20).

(*i*) *A Gazetteer of the Province of Sind*, 1907 (Ind. Doc. C-10):

Sind: "The limits of the province ... are bounded ... on the south ... by the Arabian sea and the Ran of Cutch." (p. 1.)

(*j*) *The Imperial Gazetteer of India*, Vol. XXII, 1908 (Pak. Book 35):

"Sind is bounded ... on the south by the Rann of Cutch and the Arabian Sea." (p. 389.)

(*k*) *Imperial Gazetteer of India*, Provincial Series, Bombay Presidency, Vol. II, 1909 (Ind. Doc. C-29):

(i) "Sind is bounded ... on the south by the Rann of Cutch and the Arabian Sea." (p. 171.)

(ii) Hyderabad: "It is bounded... on the south by the Rann of Cutch." (p. 219.)

(iii) Thar Parkar: "It is bounded... on the east by... the Rann of Cutch; on the south by the Rann of Cutch." (p. 298.)

(*l*) *Gazetteer of the Province of Sind* – "B", Vol. VI, Thar and Parkar District, 1919 (Ind. Doc. C-43):

Thar Parkar: "The District is bounded... on the south by the Rann of Cutch." (p. 1.)

(*m*) *Gazetteer of the Province of Sind* -- "B", Vol. I, Karachi District, 1919 (Ind. Doc. C-47):

"The Karachi District bounded first by the Gunee and Badin Taluka of the Hyderabad District, then by the Rann of Cutch and the broad Khori Creek." (p. 1.)

(*n*) *Gazetteer of the Province of Sind* -- "B", Vol. II, Hyderabad District, 1920 (Ind. Doc. C-42):

"The Hyderabad District... is bounded... on the south by the Rann of Kutch." (p. 1.)

(*o*) *Gazetteer of the Province of Sind* -- "B", Vol. II, Thar Parkar District, 1926 (Ind. Doc. C-44):

Thar Parkar: "It is bounded... on the south by the Rann of Cutch." (p. 1.)

(*p*) Military Report of the Sind Independent Brigade Area, General Staff, India, 1928 (Ind. Doc. TC-77):

"Sind is bounded... on the south by the Rann of Kutch and the Arabian Sea...". (p. 14.)

5. *The 24th Degree of North Latitude as the Limit of Kutch*

(*a*) *Kutch Administration Reports*

Reports for the years 1874–75, 1876–77, 1943–44, 1944–45 state that Kutch is situated between the 20th and 24th degree of north latitude (Pak. Doc. A.12, Ind. Docs. A-38, C-73 and C-74).

(*b*) *Bombay Administration Reports*

An extract was reproduced in the Preface to the Report for 1872–73 (Ind. Doc. CCC-6) from the Proceedings of the Government of India in the Home Department, dated 12 May 1873, which reads as follows:

"As the history of a year's Government cannot be followed without a fair understanding of, and a frequent advertance to, the existing condition of the country and political institutions, the Administration Report for 1872–73 should, in addition to the annual narrative, contain chapters of standard reference to be written up once for several years to come." (p. 1.)

Pakistan says that, in pursuance of these instructions, starting from 1872, the practice was that chapters for several years, called Chapters of Standard Reference, were written, would remain undisturbed for several years and then would be revised. Such chapters were written as Chapter I in the Reports for 1872–73 (Ind. Doc. CCC-6), 1882–83 (Ind. Doc. C-41), 1892–93 (not on record), 1901–02 (Ind. Doc. C-78) and 1911–12 (Pak. Book 73/7); in the Report for 1921–22 (Ind. Doc. C-96), such a chapter did not figure in the beginning but formed Part III of the Report. Some sections in Chapter I of the Reports for 1872–73, 1882–83, 1892–93, 1901–02 and 1911–12 have headings in red letters and hence those chapters are referred to as "Red

Chapters" or "Standard Chapters". Pakistan says that the Red Chapters are the standard ones for the areas and each chapter refers to the Standard Chapter then current.

In the Red Chapter for the year 1872–73 (Ind. Doc. CCC-6), the Province of Kutch is described as extending from the 22nd to the 24th degree of north latitude. In Chapter I of the Report for 1873–74 (not on record) there is apparently a note to the effect that the geographical arrangement which was adopted in the Report for 1872–73 has been adhered to in the Report for 1873–74. On the basis of this remark, Pakistan contends that the Report for 1872–73 also indicates that Kutch extended from the 22nd to the 24th degree of north latitude. As a similar remark appears in the Reports for 1875–76 (Ind. Doc. C-76), 1876–77 (Ind. Doc. C-25), 1877–78 (not on record), 1878–79 (not on record), these Reports too, ought to be construed as indicating that Kutch extended from the 22nd to the 24th degree of north latitude (*vide* Pak. Chart 35). Pakistan further suggests that the Reports for 1879–80, 1880–81 and 1881–82 (not on record) ought to be read with the Report for 1872–73 (Ind. Doc. CCC-6), in the Standard Chapter of which Kutch is limited to the 24th degree of north latitude.

The Report for 1882–83 (Ind. Doc. C-41) contains the Standard Chapter but there is no specific mention of the 24th degree of north latitude therein. But this Report as well as the Reports for 1883–84, 1884–85, 1885–86, 1886–87, 1887–88, 1888–89, 1889–90, 1890–91 and 1891–92 (not on record) should be included in the list of the basis that they should be read with the Report for 1872–73 (Ind. Doc. CCC-6), which contains the Standard Chapter wherein Kutch is limited to the 24th degree of north latitude.

The Standard Chapter in the Report for 1892–93 (Ind. Doc. C-19) describes Kutch as extending from 20° 47′ to the 24th degree of north latitude. On the basis of this description, Pakistan contends that the subsequent Reports till 1901–02 should also be included in the list of Reports which describe Kutch as limited to the 24th degree of north latitude.

The Standard Chapter in the Report for 1901–02 (Ind. Doc. C-78) states that Kutch lies between 20° 47′ and the 24th degree of north latitude. On the basis of this remark Pakistan contends that the Report for 1902–03 (Ind. Doc. C-79) should also be included in the list.

In the Report for 1903–04 (Ind. Doc. C-80) the following remark appears in Chapter I:

Area, Aspect, Climate, Products Historical Summary Form of Administration Character of Land Tenures, System of Surveys and Settlement Civil Divisions of British Territory Details of the Last Census	See pages 1–78 of Report for 1901–02, Part II

A similar note appears in the Reports for the subsequent years till 1911–12. On the basis of this note, Pakistan includes these Reports in the list as well.

The Report for 1911–12 (Pak. Book 73/7) says that Kutch lies between 22° 47′ and the 24th degree of north latitude. The lists of contents in the

Reports for the subsequent years till 1921–22 have a note like the one in the Report for 1903–04, referring, however, to the Report for 1911–12 instead of the Report for the year 1901–02. According to Pakistan, all these Reports should be included in the list of Reports describing Kutch as extending up to the 24th degree of north latitude only.

Part III of the Report for 1921–22 (Ind. Doc. C-96), which is said to be the Standard Chapter in that Report, and the Reports for 1922–23 and 1923–24 (Ind. Doc. C-17), do not give the co-ordinates of Kutch.

As regards the "Red Chapter" or the "Standard Chapter", India had drawn attention to a passage in the extract from the Proceedings of the Government of India in the Home Department, dated 12 May 1873, reproduced in the Preface to the Report for 1872–73 (Ind. Doc. CCC-6) which, in continuation of the passage relied upon by Pakistan, reads:

> "In connection with the preparation of the Chapters of standard reference, the headings of which are in red letter, the acknowledgements of this Government are due to the Reverend Doctor Wilson for the learned paper on the 'Tribes and Languages'; to Lieutenant-Colonel Haig for the account of the Survey Tenure and of the Tenures met with in Sindh; to Lieutenant-Colonel Prescott, and Mr. Nairne, C.S., for the description of the special tenures of Gujarat and the Konkan; and to Mr. Chambers, F.R.S., for the history of the Meteorology of the past season in Bombay. The greater portion of the Historical Summary has been contributed by Mr. Batty, C.S., and the Chapter on Manufactures is the work of Mr. Terry, the Superintendent of the Sir Jamsetji Jijibhoy School of Art and Industry.
>
> "The several chapters of annual narrative are in the main abridgements of the different departmental reports. Most of these reports are available in a printed form to any one desiring detailed information on the subjects to which they relate."

India says that the Standard Chapter is contributed by outsiders, said to be specialists on particular topics in the ordinary course of their work. Besides the Standard Chapter, there are "chapters of annual narrative", which, the Preface shows, are in the main "abridgements of the different departmental reports". There is no peculiar sanctity about the Red Chapters because they are written only once in ten years and the others are made up every year from reports and other sources. It does not follow that whatever is said in the Red Chapter must necessarily be true and that whatever is said in the other parts of the Administration Report is subordinate to it. The Red Chapters are only intended to provide a sort of general background in the light of which various things mentioned in the other parts of the Report may be understood. Regarding the Report for 1921–22 (Ind. Doc. C-96), the scheme was changed and there was no Red Chapter but there was a separate Chapter as Part III; it cannot be distinguished as a Red Chapter.

(*c*) *Gazetteers*

(i) Hamilton, *The East India Gazetteer*, 1815 (Pak. Book 28), mentions Kutch as lying between the 23rd and 24th degree of north latitude. (p. 322.)

(ii) *Gazetteer of the Bombay Presidency*, Vol. V, 1880 (Ind. Doc. C-5), states that Kutch extends from 20° 47′ to the 24th degree of north latitude. (p. 1.)

(iii) *The Imperial Gazetteer of India*, Vol. IV, 1885 (Ind. Doc. C-27) describes the limits of Kutch as extending from 20° 47′ to the 24th degree of north latitude. (p. 57.)

(iv) *The Imperial Gazetteer of India,* Vol. XI, New Edition, 1908 (Ind. Doc. C-28) gives the same limits of Kutch. (p. 74.)

(v) and (vi) *The Imperial Gazetteer of India,* Provincial Series, Bombay Presidency, Vols. I and II, 1909 (Pak. Book 34 (Ind. Doc. C-29)) mention that the limits of Kutch extend from 22° 47′ to the 24th degree of north latitude. (pp. 2 and 326, respectively.)

(*d*) *Other Documents*

(i) MacMurdo, *An Account of the Province of Cutch, 1820* (Pak. Book 18) says that the Province of Kutch is contained within the 22nd and the 24th degrees of north latitude. (p. 205.)

(ii) Hamilton, *A Geographical, Statistical and Historical Description of Hindoostan and the Adjacent Countries,* Vol. I, 1820 (Ind. Doc. CC-2) mentions that Kutch is situated between the 24th and 25th degrees of north latitude. (p. 585.)

(iii) J. Burnes, *A Narrative of a Visit to the Court of Sinde; A Sketch of the History of Cutch, 1839* (Pak. Book 3) describes Kutch as lying between the 22nd and the 24th degree of north latitude. (p. 243.)

(iv) Grant, *Memoir to Illustrate a Geological Map of Cutch,* 1836 (Ind. Doc. C-15) says that Kutch is situated between the 22nd and the 24th degree of north latitude. (pp. 403–4.)

(v) M. Postans, *Cutch or Random Sketches of Western India, 1839* (Pak. Book 4) says that Kutch is situated within the 22nd and the 24th degree of north latitude.

(vi) Raikes, *Memoir on the Kutch State, 1854* (Ind. Doc. C-3), describes Kutch as situated between the 22nd and the 24th degree of north latitude. (p. 3.)

(vii) The Kutch Administration Report for the year 1874–75 (Pak. Doc. A.12) mentions that Kutch lies between the 22nd and the 24th degree of north latitude.

(viii) The Ruling Princes, Chief and Leading Personages in the Western India States Agency, 1935 (Ind. Doc. C-75) says that Kutch extends from 22° 47′ to the 24th degree of north latitude. (pp. 15–16.)

As regards the references which say that Kutch extends to the 24th degree of north latitude, India states:

> "It will be observed that in many of these records Kutch is described as lying between 22° and 24° north latitude and this description is likely to give an impression that the territory of Kutch did not extend beyond 24° north latitude. The description however, is not quite accurate as is clear from the following facts and circumstances:
>
> "(i) The records which give this description simultaneously recognise the entire Rann of Kutch as lying within the territory of Kutch, and, for the purpose of description, the territory of Kutch is divided into two parts, the mainland of Kutch and the Rann of Kutch, the area of Kutch being given as exclusive of or as besides the Rann.
>
> "(ii) The longitudes of Kutch given in these records are also inaccurate. The territory of the Rao of Kutch lay also in the Little Rann, which lies to the east of the mainland of Kutch and extends further than the longitude given in these

records but this fact is not taken into consideration while giving the longitudes of Kutch.

"(iii) The records which describe Kutch including the Rann give the latitudes as from the southern-most tip of the mainland to the northern edge of the Rann.

"(iv) Many records expressly state that the Rann of Kutch belongs to the Rao of Kutch or the Kutch State." (Indian Memorial, para. 178.)

In reply to (i) above, Pakistan says that Hamilton's *Gazetteer*, 1828 (Ind. Doc. C-22), is the only Gazetteer which refers to Kutch being in two parts, the hilly tract and the Rann, and it mentions the upper latitude as the 25th and not as the 24th degree. So far as other records are concerned, there are only two, namely, Grant, *Memoir to Illustrate a Geological Map of Cutch, 1836* (Ind. Doc. C-15) and Raikes, *Memoir on the Kutch State, 1854* (Ind. Doc. C-3), which have given the 24th degree of north latitude as the upper limit of Kutch and at the same time expressed their opinion that the Rann is regarded or ought to be regarded as a part of Kutch; they have not recognised, and they are in no position to recognise that the Rann is a part of Kutch territory.

Regarding (ii), Pakistan says that if these references are inaccurate, other references which say that the entire Rann belongs to the Rao and on which India relies are also wrong.

With reference to (iii), it is said that it is true that the records which describe Kutch as including the Rann give the latitudes as from the southern-most tip of the mainland to the northern edge of the Rann; they are contradicted by the other material produced by Pakistan. If the whole Rann were included in Kutch, the various decisions about Nara Bet, Poong Bet, etc., and the various statements in the Treaties would have been wrong.

About (iv), Pakistan says that the records which expressly state that the Rann of Kutch belongs to Kutch are wrong and not the records which do not say so.

6. *The 24th Degree of North Latitude as the Limit of Sind*

Several documents up to 1901 describe the area of Kutch as 6,500 square miles. Pakistan says that Banni, Pachlam, Khadir and Bela were originally treated as the Rann and the figure of 6,500 square miles was the area of Kutch not including Banni, Pachham, Khadir or Bela. If the areas are measured on the Survey of India maps, the area which is shown as the mainland on the earlier maps is still, in the new maps, roughly the same; it works out at 6,580 square miles. If the area of the four units that were previously regarded as the Rann is measured, it becomes clear that the figure of 7,616 square miles is not a correction, as a more accurate measurement of the area which was previously given as 6,500 square miles, but is made up of the areas of the old mainland together with Banni and Pachham, now included in the mainland. Khadir and Bela are still treated as islands. The areas of the four units as measured on the Survey of India maps are Banni (790 square miles); Pachham (260 square miles); Khadir (120 square miles); Bela (170 square miles).

Statements to the effect that Kutch extends to the 24th degree of north latitude and that its area exclusive of the Rann is 6,500 square miles mean that the word "exclusive" is used in respect of that portion of the Rann which is below the 24th degree of north latitude; hence the 24th degree of north latitude is the northern limit of Kutch.

On this basis, Pakistan contends that the Bombay Administration Reports from 1871–72 to 1900–01 prove that the territory of Sind extended down to the middle of the Great Rann. In this connection, Pakistan also relies upon the *Gazetteer of the Bombay Presidency,* Vol. V, 1880 (Ind. Doc. C-5) which says that Kutch lies between Kathiawar and Sind, indicating that Kutch adjoins Sind and there is no intervening entity, and that it extends up to the 24th degree of north latitude and contains an estimated area of 6,500 square miles.

7. *The Entire Rann Belonged to Kutch*

India says that there is abundant evidence that the entire Rann was the territory of Kutch and that Sind territory extended only up to the northern edge of the Rann. The evidence relied upon by India is in the form of Statistical Abstracts, Administration Reports of Kutch and Bombay Presidency, Gazetteers and several published and unpublished records. This evidence, to the extent it is not dealt with in other Chapters, is discussed below.

(*a*) *Statistical Abstracts*

India has referred to the annual publications called Statistical Abstracts relating to British India for the years 1866–67 to 1875–76, 1867–68 to 1876–77, 1868–69 to 1877–78, 1870–71 to 1879–80 and 1871–72 to 1880–81 (Ind. Docs. CCC-3, CCC-4, TA-94, TA-95 and CCC-5), in all of which the area of Kutch is stated to be 6,500 square miles, "exclusive of the Rann", and in none of which the area of Sind is similarly stated to be "exclusive of the Rann". According to India, the statement of the area of Kutch "exclusive of the Rann" means that the Rann is a part of Kutch but that in giving the area of Kutch, the area of the Rann is excluded.

These Statistical Abstracts were prepared annually and covered the preceding ten years. They are Government publications and bear on the cover the endorsement "Presented to both Houses of Parliament by Command of Her Majesty".

India has drawn attention to the correspondence which took place between the Government of India and the Secretary of State in 1875–77 in connection with Statistical Abstracts. The Secretary of State sent to the Government of India a copy of a Numerical Return prepared in his office, showing the approximate area, population, revenue and military force of several Indian States and requested the Government of India that, as the figures might in some cases be inaccurate, they be carefully revised by the proper Department of the Government of India and a corrected copy of the return transmitted to the Secretary of State for his information; the Numerical Return so sent gave the area of Kutch as 6,500 square miles without the reservation regarding the Rann (Ind. Doc. TA-12). The Government of India thereupon forwarded the return to the various Provincial Governments, including the Government of Bombay, requesting that the figures be carefully examined and a statement giving the latest information be supplied to them; in the reply given by the Government of Bombay, under whose political administration Kutch was, the area of Kutch was given as 6,500 square miles "exclusive of the Rann". After receiving the replies of all the Provincial Governments, the Governor-General in Council forwarded a statement to the Secretary of State which described the area of Kutch as 6,500 square

miles, exclusive of the Rann (Ind. Doc. AAA-4). On receipt of the statement, the Secretary of State addressed a further letter to the Government of India saying that the statement had been carefully examined in his office so far as it related to the area and population of the Indian States and transmitted to the Government of India a copy of a Memorandum on the subject, with a request that the various points touched upon therein might be carefully examined, in order to arrive at the most accurate statement possible, from the data already in the possession of the Government of India, on the extent of the various territories in India and of their population; the Secretary of State hoped for a reply in time for any necessary corrections to be made in the Statistical Abstract relating to British India which, according to custom, was to be presented to Parliament at the close of the Session. He added that, when the figures relating to any province were determined, instructions should be given for their adoption in the Administration Reports and other official documents, so as to avoid the confusion that arose from the quotation of different figures for the area or population of the same territory. The accompanying Memorandum said that the statement received from the Government of India in many respects altered the statistics for the Indian States and in certain cases there was some doubt as to the correctness of the figures. The Memorandum included, *i.a.*, a statement about Bombay showing the points of variation between the figures in the statement submitted by the Government of India and the returns received in the Administration Report for 1872–73. This statement did not indicate any point of variation regarding Kutch (Ind. Doc. CCC-5). In reply, the Government of India transmitted a Memorandum, together with a revised statement embodying the latest information, after causing neccesary inquiries to be made from the local Governments, heads of administrations and political officers concerned. The Memorandum reiterated the area of Kutch as 6,500 square miles exclusive of the Rann (Ind. Doc. AAA-6).

India points out that this was an examination, and not a cursory one, at the highest level of certain information; the Government of India got a statement made that the area of Kutch was 6,500 square miles without the reservation; information was called for; the Government of Bombay corrected the statement, putting in the reservation "exclusive of the Rann". This was accepted by the Government of India and sent forward; it was sent back again and the same statement was made by the Government of India; it remained unquestioned and was incorporated in the Statistical Abstracts and presented to Parliament. The examination was for a particular purpose and therefore apparently as much care as possible was exercised to see that the information was correct. The Statistical Abstracts, India urges, are admissions on the British side.

Pakistan explains these documents thus:

Queen Victoria's Proclamation of 1858 deliberately abjured a policy of annexation in regard to the India States on the basis of the policy that the ruling chiefs should be strengthened and they should be made responsible for the administration, and that by putting them under obligations the British power would be reinforced through them. After reference to several cases regarding inclusion in Scheduled Districts of certain areas in respect of which doubt existed whether they were or were not British territory, as expounded

in Tupper, *Indian Political Practice,* Vol. I (Pak. Book 63), the following observation in the said volume is cited:

> "The suspicions allayed by the non-annexation policy of Lord Canning might be again aroused. Mr. Aitchison proposed 'that every district should be erased from the Schedule in respect to which there was any reasonable doubt as to whether it was British territory or not'." (p. 231.)

The application of this to the specific circumstances, for statistical purposes, was that, unless a matter was settled, that which had been put down somewhere should not be disturbed, particularly if the suspicions of the Indian rulers were to be aroused or their confidence undermined. For purposes of statistics and for statistical matters in Administration Reports, the policy of the British was: if there is any lack of clarity regarding a matter which affects an Indian State, let the statistics go as they are and remain what they are without disturbing them so as to undermine the confidence of an Indian State or its ruler. The context of the cases discussed by Tupper was no doubt different, and they were not analogous to the question whether the Rann belonged to Kutch or not, but the policy of the British Government in regard to statistics and in regard to Administration Reports is clearly brought out by them.

The form of the statistical material in the Statistical Abstracts at Indian Documents CCC-3, CCC-4, CCC-5, AAA-4 and AAA-6 is: area of Kutch 6,500 square miles; then there is a symbol and the explanation is given, "exclusive of the Rann", meaning that whatever may be found to belong to Kutch in the Rann is not prejudiced by a statement of the area in this entry.

The letter of the Government of India in Indian Document AAA-4, transmitting the statement, says: "this statement has been compiled from Returns supplied by our officers, but the figures, especially in regard to population, must be considered as only approximate".

In Indian Document AAA-6, the area of Kutch is shown according to the census figures; this is the area as at that time ascertained and the statement "exclusive of the Rann" does not carry any further implication.

The letter of the Secretary of State in Indian Document TA-12, which is dated 15 July 1875, shows that, on that date, in the Secretary of State's Office, the statistical data relating to Kutch and its area were without reservation as to the Rann. On 17 June of the same year, Colonel Parr, Political Agent, Kutch, wrote to Ravenscroft, Acting Chief Secretary to the Government of Bombay, the Report about Kutch Administration (Pak. Doc. A.12). When an enquiry was made by the Government of India regarding the letter of the Secretary of State in Indian Document TA-12, Ravenscroft sent the reply on 30 September 1875 in which he indicated the area of Kutch with an asterisk and "exclusive of the Rann". Two months later, on 3 November 1875, with reference to the communication from the Commissioner in Sind that the Political Agent, Kutch, be asked to meet the Political Superintendent, Thar Parkar, on the border to determine accurate boundaries between Sind and Kutch on the Rann (Pak. Doc. B.169), Ravenscroft made an endorsement asking the Political Agent, Kutch, for his observations or suggestions (Pak. Doc. B.171) and the Political Agent, Kutch, called upon the Dewan of Kutch to inform himself whether the boundary between Thar Parkar and Kutch had ever been determined; if so, the boundary

was to be described, and, if not, it was to be stated what had been considered as the boundary and what boundary Kutch claimed (Pak. Doc. B.171). The question for decision would be: in the circumstances, what did Ravenscroft mean when he put the asterisk and "exclusive of the Rann"?

(b) Kutch Administration Reports

The Political Agent, Kutch, annually submitted to the Government of Bombay Reports about the administration of Kutch from at least 1855–56 until 1875–76. From 1876–77 to 1917–18 the Dewan of Kutch used to prepare the Report and submit it to the Political Agent, who used to pass it on to the Government of Bombay with a forwarding letter. From 1918–19 to 1923–24, the Dewan submitted to the Political Agent every year a Summary of Kutch Administration Reports, which used to be forwarded by the Political Agent to the Government of Bombay. As regards the period following the formation of the Western India States Agency and the inclusion of Kutch in that Agency in 1924, it is not known whether any such Reports were submitted for the years 1924–25 and 1925–26. In 1926, however, a synopsis of the principal events was submitted by the Dewan of Kutch to the Agent to the Governor-General in the western India State Agency. It is not known whether such a synopsis was sent for subsequent years. From 1939–40 to 1944–45, the Dewan of Kutch submitted regular Administration Reports to the Agent to the Governor-General who forwarded them to the Government of India.

All these Reports, etc., are compendiously referred to as "Kutch Administration Reports". They cover a period of 90 years from 1855–56 to 1944–45; Reports for ten of these years are said by India to be not available; it is said that it is not known whether Reports for 28 of these years were submitted at all; and Reports for three years, though available, are not produced by India. Fifty Reports are on record. They variously describe the area of Kutch. These descriptions may be analysed as follows:

Sl. No.	*Description of Area*	*Years of Report*	*Document Nos.*
1.	"6,50,059 miles, independent of the Great Rann which in educational matters might be left wholly unnoticed". (There appears to be a misprint of 6,50,059 miles for 6,500.59 miles).	1870–71	Ind. Doc. TA 11
2.	"The territorial extent of the country which is 6,500 square miles..."	1872–73	Pak. Doc. B.119
3.	"Area including the Rann and islands in it, of about 9,000 square miles."	1874–75	Pak. Doc. A.12, & Pak. Doc. B.275
4.	"6,500 square miles exclusive of the Rann."	1855–56	Ind. Doc. TA 10
		1877–78	Ind. Doc. A-39
		1878–79	Ind. Doc. A-40
		1879–80	Ind. Doc. A-41
		1880–81	Ind. Doc. A-17
		1881–82	Ind. Doc. A-18
		1882–83	Ind. Doc. A-19

Sl. No.	*Description of Area*	*Years of Report*	*Document Nos.*
		1883–84	Ind. Doc. A-20
		1884–85	Ind. Doc. C-37
5.	"6,500 square miles, exclusive of the Rann, which is, 9,000 square miles, belonging to His Highness (or to the Rao or is a part of the Province)."	1876–77	Ind. Doc. A-38
		1885–86	Ind. Doc. C-38
		1887–88	Ind. Doc. C-52
		1889–90	Ind. Doc. A-42
		1891–92	Ind. Doc. C-53
		1892–93	Ind. Doc. C-54
		1898–99	Ind. Doc. TC 16
		1899–1900	Ind. Doc. C-55
		1900–1901	Ind. Doc. TC 17
6.	"7,616 square miles, exclusive of the Rann which belongs to the Rao."	1902–03	Ind. Doc. TC 18
		1903–04	Ind. Doc. C-56
		1904–05	Ind. Doc. TC 19
7.	"7,616 square miles besides the Rann of Kutch."	1905–06	Ind. Doc. C-58
		1906–07	Ind. Doc. C-59
		1907–08	Ind. Doc. TC 20
		1908–09	Ind. Doc. C-60
		1909–10	Ind. Doc. C-61
8.	"7,616 square miles, besides the Rann of Kutch, which belongs to the Rao."	1911–12	Ind. Doc. C-62
		1912–13	Ind. Doc. C-63
		1913–14	Ind. Doc. C-64
		1914–15	Ind. Doc. C-65
		1915–16	Ind. Doc. C-66
		1916–17	Ind. Doc. C-67
		1917–18	Ind. Doc. C-68
9.	"7,616 square miles, exclusive of the Rann, which is about 9,000 square miles."	1910–11	Ind. Doc. C-57
		1918–19	Ind. Doc. TA 13(a)
		1919–20	Ind. Doc. TA 13
		1920–21	Ind. Doc. TA 13(b)
		1921–22	Ind. Doc. TA 13(c)
		1922–23	Ind. Doc. TA 13(d)
10.	"7,616 square miles, exclusive of the Rann."	1926	Ind. Doc. A-61
11.	"8,249.5 square miles, exclusive of the Rann of Kutch, which forms part of the Kutch State territory."	1939–40	Ind. Doc. C-69
		1940–41	Ind. Doc. C-70
		1941–42	Ind. Doc. C-71
		1942–43	Ind. Doc. C-72
		1943–44	Ind. Doc. C-73
		1944–45	Ind. Doc. C-74

Thus, two of the 50 Reports give the area of Kutch without reference to or reservation regarding the Rann, one gives the area as about 9,000 square miles including the Rann, while 47 give the area as "independent of the Rann" or "exclusive of the Rann" or "besides the Rann"; of these 47 Reports, 24 further mention that the Rann belongs to the Rao or to the Kutch State territory or that it is a part of the Kutch Province.

Up to 1901–02, the area is mentioned as 6,500 square miles but from 1902–03 to 1926 it is mentioned as 7,616 square miles, and from 1939–40 to 1944–45 the area is said to be 8,249.5 square miles. The change of the area from 6,500 square miles to 7,616 square miles is explained by India by referring to the *Bombay Gazetteer*, Vol. V-B, 1905 (Ind. Doc. C-50), which says; "The

area was increased from 6,500 square miles in 1901–02 to accord with the measurements of the survey which has been in progress since 1872–73." The increase in the area from 7,616 square miles to 8,249.5 square miles is due to the acquisition of about 550 square miles as a result of the compromise recorded in the Bombay Government Resolution of 1914 (Ind. Doc. A-44) on a claim made by the Rao of Kutch (Ind. Doc. A-31). Pakistan's explanation for the increase has already been mentioned.

Of the three Reports not produced, one Report – for 1871–72 – is said to describe the area thus: "The territorial extent of the Sub-Division comprises an area of 6,500 square miles" (This Report as well as the Reports for 1870–71 and 1872–73 (Ind. Doc. TA 11 and Pak. Doc. B.119) are in fact the Reports of the Deputy Educational Inspector of Kutch and form enclosures to the Report of the Political Agent, Kutch). The remaining two Reports – for 1873–74 and 1875–76 – are said to make no mention of the area of Kutch.

Thirty-one of these Reports also state that the area of the Rann is about or roughly 9,000 square miles.

India has pointed out that the Reports submitted by the Dewan were scrutinised and commented upon by the Political Agent before being forwarded to the Government of Bombay; the Government of Bombay on their part also examined the Reports and passed appropriate Resolutions, which were transmitted, along with the Reports, to the Government of India, which also looked into the Reports; and at least some of the Reports were sent by the Government of India or by the Government of Bombay to the Secretary of State or the India Office. In support of these statements, India relies upon the following documents by way of illustration:

(i) Letters of the Political Agent forwarding the Reports for the years 1876–77, 1877–78, 1878–79, 1879–80, 1880–81, 1883–84, 1889–90, 1891–92, 1898–99 and 1899–1900 (Ind. Docs. A-38, A-43, A-40, A-44, A-18, A-20, A-42, A-45, A-47 and A-46).

(ii) Resolutions of the Government of Bombay in respect of the Reports for the years 1876–77, 1878–79, 1881–82, 1889–90, 1891–92, 1899–1900, 1903–04 and 1908–09 (Ind. Docs. A-48, A-40, A-18, A-42, A-49, A-50, A-51 and A-52).

(iii) Endorsement of the aforesaid Resolutions on the Government of Bombay in Indian Documents A-48, A-40, A-18, A-42, A-49, A-50, A-51 and A-52 forwarding them to the Government of India and the letters of the Government of Bombay to the Government of India in Indian Documents A-53, A-54 and A-55.

(iv) Endorsement of the aforesaid Resolutions of the Government of Bombay in Indian Documents A-40, A-42, A-49, A-50, A-51, A-52 and the notes of the Government of India in Indian Document A-56.

India states that thus the Reports were not merely sent out, pigeon-holed and filed; they were carefully looked at, comments were made, action was taken. It is inconceivable that on a matter like the area of the State itself, had there been any objection of any kind, all this minute criticism would not have taken notice of it.

India's case about these Reports is: A large number of records, including official records spread over more than 100 years, indicate that the territory of Kutch, including the entire Rann, belonged to the Rao of Kutch and comprised an area of 9,000 square miles; the assertions made by the Kutch Darbar were not contradicted by the Political Agent, who by reason of his presence in Kutch had intimate knowledge of the affairs of Kutch, nor by the Government of Bombay, to whose political superintendence the Kutch State was entrusted, nor by the Government of India and the India Office, who were fully aware of these assertions. On the other hand, the Government of Bombay as well as the Government of India recognised in their own records that the territory of the Rao of Kutch included the whole of the Rann measuring 9,000 square miles.

Pakistan's comments on these Reports are as follows: Many of the Reports give the area of the Rann as "exclusive of the Rann". A similar description appears in some Gazetteers, and other works and documents. The comments of Pakistan on the expression "exclusive of the Rann" given hereafter are applied not only to the Kutch Administration Reports but to all other works and documents in which that expression is used in describing the area of Kutch.

Pakistan says that if a statement of the area of Kutch is made as "excluding the Rann", it carries no implication that the Rann in its entirety belongs to Kutch.

The expression is consistent with some portion of the Great Rann being a part of Kutch. It suggests that there is some connection between Kutch and the Rann, but what that connection is cannot be deduced from the expression. The area of Sind is described as "exclusive of Khairpur"; it suggests that for some reason or for some purpose there is a connection between Khairpur and Sind but it does not by itself explain what that connection is. The area of Aden is described as exclusive of Perim – from the exclusion itself one does not know what is the connection between Aden and Perim. If the Rann was a part of Kutch, the question of not including it directly and incorporating it in the description would not arise; there would be no occasion for exclusion. Apart from suggesting that there is some connection between Kutch and the Rann, the expression sheds no light whatsoever on the nature of the connection. If the Rann belonged to the Rao, there was no need for adopting this roundabout formula; there would be no difficulty about including the whole of the area of the Rann in the description. Otherwise, the words "exclusive of" would have to be interpreted to mean "inclusive of".

There are six distinct possibilities if the extent of A is given as exclusive of B:

(i) the whole of B is part of A;

(ii) a portion of B is a part of A but the extent of that portion is not ascertained;

(iii) the whole of B may be a part of A but it is not certain that it is;

(iv) a portion of B may be a part of A but it is not certain that it is;

(v) no portion of B is a part of A, but the whole of B for certain purposes may be counted together with A;

(vi) no portion of B is a part of A, but a portion of B for certain purposes may be counted together with A.

India has selected one of these possibilities – without any reason for it – and says that that is the only meaning. According to India the positive content was chosen to be conveyed in the negative form.

A few Reports, in addition to stating that the area of Kutch is "exclusive of the Rann", say that the Rann belongs to the Rao or the Kutch State. They merely forward a claim. They are self-serving statements of a party which is interested in acquiring the Rann.

There is extrinsic and intrinsic evidence to show that the whole of the Rann did not belong to Kutch.

In several Reports, for example, Indian Documents A-42, C-53 to C-59 and C-61 to C-74 the proportion of Kutch police to Kutch area is given. The ratio can only be right with areas exclusive of the Rann. In other words, the area which is not Kutch is left out. What is significant is that, according to India, the area of 550 square miles transferred to Kutch as a result of the 1914 compromise was a part of the Rann as defined by it in the Indian Memorial (para. 27). For India, there is no difference and physically today this territory is at par with the Rann. No explanation is possible why, if this area is included for police purposes, the Rann should not be included. With reference to four Reports, including Indian Document C-69, there is an additional point. When the ratio is multiplied by the strength, the area works out at 10,216 square miles which is not the area of the mainland and cannot include the whole of the Rann.

The assertion that the entire Rann belonged to Kutch is manifestly an error in regard to the settlement of the disputes about Poong Bet, Keswala Bet and Nara Bet and the dispute between Kutch and Morvi. Moreoever some portions of the Rann are included in the territory of Radhanpur and Morvi, as the Administration Reports of those States (Pak. Books 74 to 77) indicate. Similarly, Pakistan points out that other coastal States such as Dhrangadhra and Suigam are also stated to have a portion of the Rann.

Pakistan refers to certain special features of some of the Reports. Thus the Political Agent's Report for 1872–73 (Pak. Doc. B.119) describes the extent of Kutch as 6,500 square miles, without reservation about the Rann. The Report, which was made by the Deputy Educational Inspector, further states that there has been no change in the territorial extent of the country. This Report clearly brings out that the area of Kutch did not include the Rann. At the time of its submission there was no Dewan and the Political Agent, in submitting it, described it as being very satisfactory. The Deputy Educational Inspector covered not merely education but other aspects as well in his Report.

The Report for 1874–75, made by the Political Agent, gives the area of Kutch as about 9,000 square miles, "including the Rann and islands in it" (Pak. Docs. A.12 and B.275). This is positive evidence of the limits of Kutch; the area of 9,000 square miles included that part of the Rann which lay below the 24th parallel, as the Report describes Kutch as lying between the 22nd and the 24th degree of north latitude. This Report also shows that before 1876 the formula being used was either 6,500 square miles without any reservation, as in Pakistan

Document B.119, or, as a careful Political Agent put it down, 9,000 square miles including a part of the Rann. If the area in 1874–75 was 9,000 square miles, by what process did it increase in subsequent years? What right had the Dewan to assert something different?

Indian Document A-38 is the first Report submitted by the Dewan and the statement of the area of Kutch as "exclusive of the Rann" appears for the first time therein; nevertheless, the Report describes Kutch as situated between the 22nd and the 24th degree of north latitude and as bounded on the north and north-west, east and south-east by the Great Rann; the concept is fairly clear that Kutch itself is 6,500 square miles but an additional claim is being put that the Rann also belongs to Kutch through some title which is assumed but not explained. The claim is contradicted by and is inconsistent with the Poong Bet case, the Kennedy Report and earlier incidents.

The Report of 1889–90, Indian Document A-42, refers to Khavda and Luna as "outlying tracts" of Kutch and as "several frontier posts on the eastern and northern side of Cutch".

Referring to Indian Documents C-73 and C-74, the Reports for the years 1943–44 and 1944–45, Pakistan says that, while giving the area of Kutch as "8,249.5 square miles, exclusive of the Rann of Kutch, which forms part of the Kutch State territory", they mention that Kutch extends up to the 24th degree of north latitude and is bounded on the north-east and south-east by the Rann. The two statements taken together mean that the authors, being conscious of the fact that the Rann is a separate tract, which bounds Kutch and separates it from everything else, claim that it belongs to the Rao.

Regarding the question raised by India as to why the assertions made in these Reports were not contradicted, Pakistan says that the British were under no legal obligation to contradict them; the question of acquiescence could not possibly arise as between the Paramount Power and a vassal State in political subordination. By making statements in the Reports, Kutch did not create a situation which attracts the doctrine of acquiescence. When one does something which one has no right to do and keeps on doing it, and somebody suffers by it without raising an objection; then it might be deduced from the submission to the unlawful conduct, or the suffering of the encroachment without protest over a period of years, that there has been acquiescence. Here not only was there no question of the Rao doing anything in the Rann which would create a situation which would attract the doctrine of acquiescence; the reverse was true. The question here is of "non-objection", but the British were under no legal obligation to take notice of the assertions made in the Reports or to contradict these as long as they were manifestly and continuously exercising jurisdiction over the Rann. Moreover, the principles of International Law did not apply as between the Paramount Power and the vassal. Apart from that, the question of legal obligation would not arise as between a vassal State and a Paramount Power. Furthermore, there was the general policy declaration, as pointed out by Tupper, that the suspicions allayed by the non-annexation policy should not be again aroused. If for statistical purposes the territory was shown as State territory, this did not affect its status.

As regards the point made by India that the Reports were carefully examined by the Political Agent, the Government of Bombay and the Government of India and that the Secretary of State also was aware of the assertions made in them, Pakistan says that much depended upon the administration at any given time; the Reports would be looked at sometimes formally, sometimes cursorily, normally with reference to their political content, hardly ever with reference to their statistical content. To say that the Reports were looked at, does not carry the matter any further. Pakistan has also drawn attention to the Circular letter containing the Despatch of the Secretary of State (Pak. Doc. B.120) in which it was mentioned that Political Agents were not always careful and vigilant in checking Administration Reports submitted by Indian States.

In reply, India reiterates its position regarding the expression "exclusive of the Rann". It says that it is plain that when one says that the area of Kutch is "exclusive of the Rann", this can have no other meaning than that the Rann is a part of Kutch, but that for the purpose of the relevant area, only the effective area is given. The statement "exclusive of Khairpur" in relation to Sind means that Khairpur is almost an enclave, an independent State, and that, when speaking of Sind, Khairpur is not to be included. The word "exclusive" has its own meaning in the context in which it is used. In the Statistical Abstracts, whether statistics are compiled or figures are given, it is the effective area which is mentioned. The words "exclusive of the Rann" imply that, if a description of Kutch is given simply stating the area in mileage, that would be accurate for the purposes for which the description is used; it must be borne in mind that various statistics are embodied – Revenue, Police, Education, etc. It is suggested by Pakistan that the words "exclusive of the Rann" do not mean exclusive of the whole Rann but a portion of the Rann, but no parallel mention is made for Sind or any other territory. On some occasions, the words "exclusive of the Rann" are not used; one person may think it not necessary to mention the area; another thinks it necessary to mention it – after mentioning the area, he says "exclusive of the Rann". If only a part of the Rann was intended, then there was nothing to prevent that from being said.

As regards the inferences drawn by Pakistan from the ratio of policemen to the area of Kutch, the police are meant for the effective area. This is made clear in the Reports in Indian Documents A-40, A-18, A-60, A-38, A-39, C-38, C-37 and C-52, in which it is categorically stated that the ratio given is "exclusive of the Rann". Even if the words "exclusive of the Rann" were not mentioned, that is the way one should look at it, namely, that the proportion per area is always exclusive of the Rann. The position is the same as regards the Report of the Deputy Educational Inspector (Pak. Doc. B.119); Indian Document TA 11 is also a Report made by an Education Inspector where it is expressly pointed out that the area is independent of the Great Rann which in educational matters might be left wholly unnoticed. When the area of Kutch is given as "exclusive of the Rann", it does not necessarily exclude some small portions which might belong to someone else, nor, on the other hand, does the fact that some comparatively trifling portions belong to another State wipe out the statement that the Rann belongs to Kutch, which is implied in the statement of area "exclusive of the Rann", whether with the additions "belonging to the Rao", etc., or otherwise. It

is a general statement, and when the British look at it and think of it, they speak generally because the whole of the Rann except for a bit here and there belongs to Kutch.

It is suggested that the words "exclusive of the Rann" are used to mean that whatever may be found to belong to Kutch in the Rann is not prejudiced by such statement. This is supposed to be stated as a part of the policy to safeguard the interests of Kutch. If so, why not say "exclusive of a part of the Rann", making it clear that there is a part which is not ascertained but which belongs to Kutch? The policy of Queen Victoria merely meant that, in a matter of doubt or difficulty regarding any area, it should not be included as a part of British India. But when the territory of an Indian State is being defined positively, the policy requires a statement which conveys to anyone reading it that the Rann belongs to Kutch. Queen Victoria said, "refrain from saying something"; she did not say, "tell something which is not true". Can the British be taken to have stated, by reason of a policy, something which they knew was not true? In Indian Document TA 12, the Secretary of State directed that the figures be carefully revised by the proper Department and after such examination the words "exclusive of the Rann" were added. It might have been consistent with the policy of Queen Victoria to say nothing, but surely when an assertion is made by the party interested it is not consistent with Queen Victoria's Proclamation and it is not enjoined upon the officials by that Proclamation that they must accept it and allow the State to continue in the belief that what it states is true. Leaving aside the question of acquiescence, if statements of a particular kind have not been contradicted for a long time, such statements cannot be gone back upon as not being true.

As regards Pakistan's statement that as long as the Political Agents submitted the Reports, the words "exclusive of the Rann" were not used but that these words came to be used for the first time when the Dewan commenced writing Reports, India produced Indian Document TA 10, the Report for the year 1855–56, in which the Political Agent used the same expression in describing the area of the Rann. India also produced Indian Document TA 11, which is the Report for the year 1870–71, containing a Report of the Deputy Educational Inspector, stating that "independent of the Rann", the area of Kutch was 6,500 square miles. When the Dewan commenced writing Reports from 1876–77, he was thus not creating evidence in favour of Kutch.

Stress is laid by Pakistan on the Report of the Political Agent for the year 1874–75 (Pak. Doc. A.12) in which the area of Kutch is stated to be 9,000 square miles including the Rann and the islands in it. The Political Agent in 1855–56 said that the area of Kutch was 6,500 square miles excluding the Rann (Ind. Doc. TA 10). If reliance is to be placed on Pakistan Document A.12 exclusively, this earlier Report of the Political Agent, a number of Bombay Administration Reports, all subsequent Kutch Administration Reports, and the Statistical Abstracts laid before Parliament would all have to be disregarded because for some reason the Political Agent's word in Pakistan Document A.12 is not to be contradicted and his description is not to be questioned by anyone. The subsequent Reports are more accurate and this one, in which there obviously is an inaccurate description, need not be referred to.

India particularly refers to the Reports which give the area of Kutch as "besides the Rann" and says that this expression is stronger than "exclusive of the Rann" and obviously means that the Rann is a part of Kutch.

As regards the Despatch of the Secretary of State (Pak. Doc. B.120) of 1892, in spite of the instructions that the Political Agent should be vigilant in submitting the Administration Reports of Indian States, the Administration Reports continue to show that the area of Kutch was 6,500 square miles exclusive of the Rann.

With reference to India's observation that no reservation regarding the Rann was made in the case of Sind, Pakistan points out that the Administration Reports of Dhrangadhra, Radhanpur and Morvi and other States abutting on the Little Rann (Ind. Docs. TC 22 to TC 37) say nothing about the rights of those States in the Rann, yet such rights did exist. Hence the absence of a reservation regarding the Rann in stating the area is not synonymous with the absence of rights. Reading together the Reports of Kutch, which say "exclusive of the Rann", and the Reports of other States abutting upon the Rann, one would have to say either that the words "exclusive of the Rann" do not mean that the whole Rann belongs to Kutch – because otherwise the other abutting States could not have any rights in the Rann – or else that they show that the British policy with reference to Administration Reports was that they could be allowed to remain wholly inconsistent with each other. One Administration Report says something and another says something which contradicts it, destroying, therefore, the reliability of the Administration Reports.

Pakistan states also that in its present condition the area north-west of Khori Creek is as barren as the Rann. Yet that area was specifically added to the area of Kutch and the ratio of policemen takes it into account. There is thus no room for the distinction betweeen effective and non-effective areas for the 550 square miles are just as effective or non-effective as the Rann. The real distinction is that the title of Kutch to one was regarded as unquestioned while in relation to the other questions were pending.

(*c*) *Bombay Administration Reports*

The Government of Bombay published Administration Reports of the Bombay Presidency. These Reports dealt not only with the Bombay Presidency proper but also with the Indian States under the political superintendence of the Government of Bombay. It is not clear when the publication of these Reports commenced, but 31 Reports within the period from 1871–72 to 1923–24 are on record. Twenty-two other Reports within that period have not been produced but India granted inspection of them to Pakistan; apparently from 1924 onwards, no Reports were published.

As explained in Section 5 (*b*), the Reports for 1872–73 (Ind. Doc. CCC-6), 1882–83 (Ind. Doc. C-41), 1892–93 (Ind. Doc. C-19), 1901–02 (Ind. Doc. C-78) and 1911–12 (Pak. Book 73/7) contain what is called the "Red Chapter" or the "Standard Chapter"; and according to Pakistan the Report for 1921–22 (Ind. Doc. C-96) also contains the "Standard Chapter" in Part III. The Standard Chapters in these Reports give, *i.a.*, the areas of Indian States, including Kutch. Besides the Standard Chapters, the Reports contain what are called Chapters

of "Annual Narratives" or "Current Chapters" which also give the areas of Indian States, including Kutch.

The various Reports on record describe the area of Kutch in different terms. An analysis of 23 of these Reports is made below, the analysis of the six Reports containing the "Standard Chapters" being made separately thereafter.

Sl. No.	*Description of Area*	*Years of Report*	*Document Nos.*
1.	6,500 square miles, exclusive of the Rann.	1875–76	Ind. Doc. C-76
2.	Exclusive of the Rann 6,500 square miles.	1876–77	Ind. Doc. C-25
3.	7,616 square miles exclusive of the Rann.	1900–01	Ind. Doc. C-77
		1902–03	Ind. Doc. C-79
		1906–07	Ind. Doc. C-83
		1907–08	Ind. Doc. C-84
		1908–09	Ind. Doc. C-85
		1909–10	Ind. Doc. C-86
		1910–11	Ind. Doc. C-87
		1912–13	Ind. Doc. C-88
		1913–14	Ind. Doc. C-89
		1914–15	Ind. Doc. C-90
		1915–16	Ind. Doc. C-91
		1916–17	Ind. Doc. C-92
		1917–18	Ind. Doc. C-93
		1918–19	Ind. Doc. C-94
		1919–20	Ind. Doc. TC 21
		1920–21	Ind. Doc. C-95
		1922–23	Ind. Doc. C-97
		1923–24	Ind. Doc. C-97
4.	6,500 square miles, besides the Rann.	1898–99	Ind. Doc. C-98
		1899–1900	Ind. Doc. C-99
5.	7,616 square miles, exclusive of the Rann, which belongs to the Rao.	1903–04	Ind. Doc. C-80
		1904–05	Ind. Doc. C-81
		1905–06	Ind. Doc. C-82

The analysis of the six Reports containing Standard Chapters is as follows:

1.	Standard Chapter: No reference.	1872–73	Ind. Doc. CCC-6
	Current Chapter: 6,500 square miles independent of the Rann.		
2.	Standard Chapter: 6,500 square miles.	1882–83	Ind. Doc. C-19
	Current Chapter: No reference.		
3.	Standard Chapter: 6,500 square miles exclusive of the Rann.	1892–93	Ind. Doc. C-19
	Current Chapter: 6,500 square miles.		
4.	Standard Chapter: No reference.	1901–02	Ind. Doc. C-78
	Current Chapter: 7,616 square miles exclusive of the Rann.		

Sl. No.	*Description of Area*	*Years of Report*	*Document Nos.*
5.	Standard Chapter: 7,616 square miles, exclusive of a portion of the Rann.	1911–12	Pak. Book 73/7
	Current Chapter: 7,616 square miles, exclusive of the Rann.		
6.	Standard Chapter: 7,616 square miles exclusive of a portion of the Rann.	1921–22	Ind. Doc. C-96
	Current Chapter: 7,616 square miles exclusive of the Rann.		

The above analysis shows that one Standard Chapter and 29 Current Chapters give the area of Kutch as "exclusive" of the Rann or "besides" the Rann or "independent" of the Rann. Two Standard Chapters give the area of Kutch as "exclusive of a portion" of the Rann. One Standard Chapter and one Current Chapter give the area of Kutch without any reservation as to the Rann, and one Standard Chapter does not give any area of Kutch. Three of the Current Chapters further mention that the Rann belongs to the Rao. Fourteen Reports state that the area of the Rann is about 9,000 square miles.

Regarding the remaining 22 Reports, India says that two Reports – 1873–74, and 1874–75 – do not contain any reference to the area of Kutch at all, while the other 20 Reports give the area of Kutch without any reservations as to the Rann. These Reports are for the years 1871–72, 1877–78 to 1881–82, 1883–84 to 1891–92 and 1893–94 to 1897–98. Thus, out of the 51 available Reports the total number of those which give the area of Kutch without any reservation as to the Rann is 21 while the total number of those which give the area of Kutch with reservation as to the Rann is 30.

Pakistan urges that the statements in the "Red Chapter" or the "Standard Chapter" are more authoritative than those in the "Current Chapter". The comments of the Parties on this question have been set out in Section 5 (*b*) above.

As regards the expressions describing the area of Kutch as "exclusive of the Rann", "independent of the Rann", "besides the Rann" and "belonging to the Rao", the statements of the Parties are summarised in Sub-section (*b*) above. The intrinsic and extrinsic evidence which, according to Pakistan, contradicts the proposition that the Administration Reports defined the territory of Kutch as including the whole of the Rann is also dealt with in the same Sub-section. Likewise, the argument that some of the other States abutting upon the Rann included portions of the Rann and that hence the area of Kutch could not include the entire Rann is discussed there.

The submission of the Parties that, as a result of its over-all policy, the British Government did not want to contradict any claims made by Indian States has been dealt with in Sub-section (*b*) above.

The further comments of Pakistan on the Bombay Administration Reports are as follows:

Some of the Reports, for example Indian Documents CCC-6, C-76, C-80 and C-89, give the area of the Bombay Presidency and also the area of Regulation Districts, Sind and Indian States, respectively. The area given for the Bombay Presidency is not stated to be "exclusive of the Rann". The area of the Indian States is further split up and a separate area is given for the northern group of Indian States, to which Kutch belongs; in this connection, the area of Baroda is said to be undetermined. Adding up the area of all States in the northern group except Baroda and Kutch, and assuming that the area of Baroda is just one square mile, the area of Kutch would be such that it cannot possibly include any part of the Rann. That being so, it is contended that the statement in some of the Reports that the area of Kutch is exclusive or besides or independent of the Rann cannot mean that the whole Rann belongs to Kutch.

Pakistan points out that the Resolution of 1885 (Pak. Doc. B.10) was that the Government of Bombay did not desire that any question of boundaries in the Rann between the Province of Sind and Kutch State should be raised. If the officers writing the Bombay Administration Reports indirectly raised the question of boundaries by saying that the whole of the Rann was included on the Kutch side, that would be contrary to the said Resolution.

Pakistan has brought out some features in the individual Reports as set out below:

(i) The Report for 1872–73 (Ind. Doc. CCC-6) says that Kutch contains about 6,500 square miles independent of the Rann but at the same time mentions that it extends up to the 24th degree of north latitude.

(ii) The Report for 1876–77 (Ind. Doc. C-25) refers to the area of Kutch "exclusive of its salt desert or Rann". The word "its" means exclusive of its portion of the Rann. A chart given elsewhere in the Report mentions the area of Kutch as 6,500 square miles only.

(iii) The Report for 1892–93 (Ind. Doc. C-19) describes Kutch as extending up to the 24th degree of north latitude and at the same time says that the area of Kutch is "exclusive of the Rann". Since some part of the Rann is already included up to the 24th parallel, the statements are not only consistent but indicate fairly clearly that Kutch extends only up to the 24th degree of north latitude and that the words "exclusive of the Rann" refer to some part of the Rann only.

(iv) The Report for 1898–99 (Ind. Doc. C-98) gives the area of Kutch in four places; three are in tables and one is in a heading; in three places there is no reservation as to the Rann while in one place the reservation is given.

(v) In the Report for 1899–1900, a chart gives the area of Kutch as 6,500 square miles only, but below that under a separate heading the area is given as 6,500 square miles besides the Rann.

(vi) The situation in regard to the Report for 1900–01 (Ind. Doc. C-77), is the same as for the Report for 1899–1900.

(vii) In the Standard Chapter in the Report for 1901–02 (Ind. Doc. C-78), Kutch is said to extend to the 24th degree of north latitude, though in the Current Chapter the area of Kutch is said to be exclusive of the Rann.

(viii) In the Contents of the Report for 1903–04 (Ind. Doc. C-80), there is

a note saying: "For Area, Aspect, Climate ... see the General Administration Report for 1901–02". So this Report is subordinate to the Standard Chapter in the Report for 1901–02, in which Kutch is described as extending up to the 24th degree of north latitude only. Hence the description of the area of Kutch in the Current Chapter as "exclusive of the Rann" cannot mean "exclusive of the whole Rann".

(ix) There is a similar note in the Report for the year 1912–13 (Ind. Doc. C-88) referring to the Report for the year 1911–12 (which contains the Standard Chapter defining the area of Kutch as "exclusive of a portion of the Rann"), though the Current Chapter says that the area of Kutch is "exclusive of the Rann".

Pakistan draws special attention to the fact that although the Reports for 1903–04, 1904–05, and 1905–06 (Ind. Docs. C-80, C-81 and C-82) mention that the Rann belongs to the Rao, this statement was not repeated thereafter and was abandoned.

Pakistan points out that some of the British officials never took notice of the Administration Reports, as for example the Commissioner in Sind who said that he was not aware that there was any such claim by Kutch (Pak. Doc. B.378). The Rao did not use them as evidence in support of his claims in his disputes with other coastal States. They appear to be in a category which was not even referred to.

Pakistan adds that the Administration Reports are statistical compilations for certain purposes; they come nearest to being acts of officials but they do not carry any stamp of authenticity about statistical matters. They provide general information for people who want to get an outline of the picture. They are not intended to be records of rights or to determine rights. Where Administration Reports had started with a particular entry, this was repeated without account being taken of the fact that somewhere else something else had happened.

As regards the submission of Pakistan that the calculation of the areas of the Indian States in the northern group in the Bombay Presidency does not admit of inclusion of any part of the Rann in the area of Kutch, India says that when there is a statement that the area of Kutch is exclusive of the Rann, or besides the Rann, or independent of the Rann which is repeated over and over again, the meaning is plain that the Rann is a part of Kutch, but for certain purposes it may not be taken into account. It may be that, on the figures given in these Reports, the Rann cannot be included as a part of the Presidency of Bombay or as a part of a group of States but still the expression "exclusive of the Rann", etc., is there.

With reference to the expression "exclusive of its salt desert or Rann" appearing in the Report for 1876–77 (Ind. Doc. C-75), India states that this should be looked at as a matter of English and if it is read in the ordinary way it obviously has the same significance as, and no other than, saying "it belongs to Kutch" or "it is a part of Kutch".

According to India, *prima facie* the Current Chapters should be more reliable than the Red Chapters because the latter are articles contributed by outsiders.

The Bombay Administration Reports go back to forty odd years. It is not possible to explain every statement that has been made. There must be some explanation, but short of finding the material, what was in someone's mind can only be guessed. The fact of the matter is that these are the Reports. One finds, at different times, that the area of Kutch is given with or without reservation regarding the Rann, in the Red or Current Chapter.

(*d*) *Gazetteers*

A number of publications called Gazetteers are relied upon by the Parties. These Gazetteers are compiled either by private individuals or by Government authorities. The private publications on record are those of Hamilton, Thornton and Hughes, while the Government publications are the Imperial Gazetteers and the Bombay Gazetteers.

India says that the Gazetteers published under Government authority were official documents giving particulars of various parts of the country and were considerably relied upon in various proceedings and also administratively, as they contained such information as might be required from time to time about mountains, hills, rivers, population, types of soil, boundaries, administrative details, etc. Imperial Gazetteers were published under the authority of the Government of India while Bombay Gazetteers dealt with the Bombay Presidency and were issued under the orders of the Government of Bombay. So far as the Gazetteers published by private individuals are concerned, the weight that should be given to them is a matter of opinion.

Pakistan says that the Gazetteers published by Government authorities were not official documents in the sense that they were the acts of the Government as such. They were compilations under the direction of the Government from information supplied through governmental agencies; but they went no further than that. If a gradation were to be made of the Gazetteers, the Imperial Gazetteers would probably rank higher than the rest. Some of the Imperial Gazetteers of India were published under the authority of His Majesty's Secretary of State for India in Council. The Bombay Gazetteers were published under the authority of the Government of Bombay. The persons who gave information for the compilation of these Gazetteers are not ascertainable and consequently verifications are not always easy. If a mistake occurs once, it has a tendency to be repeated many times. The Gazetteers were not records of rights; they may be useful accounts, but rights of parties would have to be determined independently. Gazetteers as a category could not award territories. They were not the voice of authority though they were issued under the aegis of an official agency. Before Government by the Crown was established, they had a status more akin to private publications than anything else.

The Gazetteers on record are discussed below chronologically:

(i) Hamilton, *The East India Gazetteer* 1815

(ii) Hamilton, *The East India Gazetteer,* Vol. I, 1828.

(iii) Hamilton, *The East India Gazetteer,* Vol. II, 1828. (Pak. Book 28, Ind. Docs. C-22 and C-36).

It is convenient to deal with these Gazetteers together and also to refer simultaneously to Hamilton's other publication, *A Geographical, Statistical and*

Historical Description of Hindostan and the Adjacent Countries, Vol. I, 1820 (Ind. Doc. CC-2).

Hamilton (1815) describes Kutch as "situated principally between the 23rd and 24th degrees of north latitude" and bounded on the north "by a sandy desert and the Province of Sindy" and adds that "the limits of Cutch to the north are not accurately defined, but it may be estimated at 110 miles in length, by 70 the average breadth". (*op. cit.*, p. 322.) Pakistan says that two latitudes give one yardstick for fixing the territory of Kutch; the word "principally" would suggest that it may here and there not conform to these latitudes, but in the main Kutch is confined to the 23rd and the 24th degree of north latitude. So, the northern and southern limits of Kutch are known. Referring to Pakistan Map 4, Pakistan points out that no distinction is made in that map between the Rann and the sandy desert. The map is of 1814 and Hamilton's above description is of 1815. What is described as sandy desert is not distinguished from the Rann. The sandy desert to the north is the Rann continued on conceptually into the sandy desert. The limits of Kutch are stated to be not accurately defined because of this very thing; how much of this desert, into which Kutch extends, is to be included; the area of 110 miles in length and about 70 miles in average breadth cannot include the whole of the area of the Rann.

Pakistan states that the mainland of Kutch as shown in Indian Map B-13 measures in breadth an average of 45.8 miles and the average breadth from the claim line of Pakistan to the southern end of Kutch comes to 69.7 miles. Thus, if the mainland alone is taken into account it falls short of the figure of breadth given by Hamilton, while, if the whole of the Rann is included it goes above that figure. Read with the description that the boundaries on the north are not defined, but the average breadth is 70 miles, it gives a very clear indication of the extent which is intended by Hamilton to be the extent of Kutch. Pakistan points out in this connection the following passage in the Preface to the Gazetteer:

> "In specifying the extent of countries the whole length but only the average breadth is given to enable the reader to ascertain the probable area in square miles. In an arrangement of this sort strict accuracy cannot be expected; but it was less vague than the usual mode of stating the extreme length and extreme breadth, and an approximation to the reality is all that is required." (p. XII.)

Thus, the area had been put for a purpose and the mention of the average breadth is not merely a random statement. When that average breadth is taken into account the northern boundary of Kutch lies along the median line.

India points out that at this time the notion was that Sind did not include Thar Parkar and when one spoke of Sind one always spoke of the western portion. Therefore, when the northern limit is put as Sind and sandy desert, it can only mean Sind on the west and Thar Parkar on the east which is a sandy desert. The Gazetteer gives the correct description, though a very brief one. The latitudes are not correct, but there had been no survey at that stage and the latitudes must be very approximate.

As regards the measurement made by Pakistan with reference to the average breadth given by Hamilton, India says that the square mileage of 110 miles of length and 70 miles of breadth gives an area of 7,700 square miles; the mainland is 6,500 square miles roughly, so the area of 7,700 square miles is too much by

1,200 square miles, which is not half the Rann as half the Rann would be 3,500 square miles. These are all approximate figures. The Little Rann also is ignored.

Pakistan relies upon another passage in the Preface to the Gazetteer in which it is said that "when a Kingdom or Province is described all the most important towns and districts it contains are also specified", (p. XVI) and contends that when Hamilton mentioned Kutch, he did not mention the Rann as a part of it.

Referring further to the statement of Hamilton that "the Province of Cutch continues, as described by Abul Fazal, barren and unproductive, the interior remaining almost unknown", Pakistan says that Hamilton knew very little of the interior.

The sources of Hamilton as given by him are Rennell, Maxfield, Drummond, Wilford, MSS, etc. Pakistan says that the information regarding Kutch is mainly Rennell's and the concept of the territory of Kutch being bounded to the north by the sandy desert is the same as Rennell's. Hamilton also looked at some map with the same kind of concept and Rennell's was the standard map which was followed. It was suggested that the map consulted was Arrowsmith's map of 1804 (Pak. Map 139). No awareness is reflected at all by Hamilton in 1815 of a claim by Kutch to the Rann.

Regarding Hamilton's publication of 1820, India refers to a passage in the Preface therein that the materials from which the description of "Hindostan" had been prepared, consisted of "printed documents generally accessible to the public and of the manuscript records deposited at the Indian Board", namely, Reports of the Presidencies on political, financial and judicial conditions of the respective Governments and copies of their correspondence with the subordinate functionaries. Thus, Hamilton had before him material at the Board's office – regular Reports sent particularly relating to boundaries. He described Kutch as follows:

> "This province is principally situated between 24th and 25th degrees of north latitude and consists of two portions; one an immense salt morass described hereafter and named the Runn; the other an irregular hilly portion completely insulated by the Runn and the sea.
>
> "To the north it is bounded by the sandy district of Chalchkaum... Including the Runn it may be estimated at 140 miles in length, by 95 the average breadth." (*Op. cit.*, p. 585.)

According to India, so far as the latitude part of the description goes, this unofficial description is incorrect. What is explicit is that it consists of two portions: one is of the salt morass – not part but the whole; the other is an irregular hilly portion completely insulated. India refers to Pakistan Map 2 to show that Chalchkaum lay to the north of the Rann.

India contends that the Gazetteers of 1815 and 1820 are not inconsistent with each other.

Pakistan points out that in the Preface to the 1820 publication, it is stated that "among the other manuscript reports but on a much less expanded scale the following may be noted...", and several names are mentioned, among them Captain MacMurdo on "Cutch, Cattywar" – he is the only one mentioned specifically with reference to Kutch. The Preface also states that Hamilton would quote below his authority for what he is going to say.

Comparing the Gazetteer of 1820 with the Gazetteer of 1815, Pakistan says that the average breadth has increased from 70 to 95 miles, roughly taking in the limits of the Rann; the Rann in 1815 was separately entered – Rann not being a part of Kutch – in 1820 the Rann is included in Kutch. In 1815, it was stated that the province was unkown, its limits to the north were undefined, it was bounded to the north by the sandy desert; in 1820 Hamilton says that the province consists of two portions and has defined the limits differently; he has seen new light in the intervening five years.

Pakistan points to a passage in the Preface saying that in case of contradictory and conflicting testimonies, those which appear to rest on the most solid foundation are selected; that in particular instances which it has been found impossible to discriminate the inferences drawn are the reverse of the position adopted by the individuals quoted and contends that Hamilton has taken liberties with the material; he has tried to reconcile, but in a work of this kind and size, one cannot always reconcile.

Hamilton states that Kutch is bounded on the north by the sandy district of Chalchkaum. In describing Chalchkaum, he says: "It is separated from Cutch by a great salt morass named the Runn." As compared to the Gazetteer of 1815, the Gazetteer of 1820 has changed the description of Kutch but has not correspondingly changed the description of Sind – the inconsistency has passed unnoticed – and has introduced a new entry Chalchkaum which is inconsistent with what is said in the changed entry relating to Kutch; it describes the Rann, as in the Gazetteer of 1815, as sweeping round the northern side of Kutch. When it says Kutch consists of two portions, it is not using a word relating to sovereignty, it does not say that the Rann is politically a part of Kutch. Kutch is in two portions because it so happens that the Rann has been called the Rann of Kutch. This is made clear by the words used elsewhere, "the hilly portion of Kutch (which may be distinguished by the name of Kutch Proper)". This is a possible construction which would give a meaning that would not contradict every other statement about Chalchkaum and the Rann.

The map attached to the Gazetteer of 1820, Pakistan Map 14, is not in keeping with the descriptions: the Rann is a separating entity and there is a riband around Kutch.

Since the publication of 1820 does not refer to the Treaty of 1819, though it refers to the Treaty of 1816, it must have been written before 1819. In the four years between 1815 and 1819, Hamilton gathered some information which cannot be checked; specific mention is made of MacMurdo but MacMurdo does not bear him out. On the other hand, while explaining the fourth clause of the Treaty of 1816, MacMurdo gave the Rann as the boundary of Kutch. Hamilton himself notes in his publication of 1820 that the Treaty of 1816 "fixed the Rann and Gulf of Kutch as the eastern boundaries of his [the Rao's] principality". The Preface mentions that statistical information is not very prevalent in the Reports coming to the Board unless there is a disputed question; and it is not safe to assume that Hamilton got the impression from these Reports that Kutch was in two portions. The book merely contains private information of a scholar who was looking into some papers.

The Gazetteer of 1828, Vol. I. describes Kutch as follows:

> "This province is principally situated between the twenty-third and twenty-fifth degrees of north latitude and consists of two portions; one an immense salt morass named the Runn, and described separately, the other an irregular hilly tract, completely insulated by the Runn and the sea. On the west the easternmost branch of the Indus and a barren waste divide Cutch from Sinde;... on the north is the sandy desert;... in length it may be estimated at 160 miles from east to west, and, including the Runn, at ninety-five from north to south." (*Op. cit.*, pp. 465–6.)

India says that the "irregular hilly tract" is what is sometimes referred to as the firm land portion, because when one speaks of Kutch one very often means that part which is inhabited; but in fact the province consists of two parts, the hilly part and the salt morass, i.e., the Rann, which is a distinctive feature.

Pakistan points out the changes made in the Gazetteer of 1828 from the description given in the Gazetteer of 1815. The Gazetteer of 1815 refers to the limits of Kutch as lying between the 23rd and the 24th degree of north latitude, while in the Gazetteer of 1828 the 24th degree has been changed to the 25th degree. The description of two portions of Kutch in the Gazetteer of 1828 does not appear in the Gazetteer of 1815. Previously the length was stated to be 110 miles while now it is 160 miles – a difference of 50 miles; the width is also raised from 70 miles to 95 miles. In the 1815 Edition the authorities quoted are Rennell, Maxfield, Drummond, Wilford, MSS, etc., while in the 1828 Edition they are MacMurdo, Elphinstone, Colonel Walker, published documents, MSS, etc. MacMurdo's account is contrary to that in the 1828 Edition. All that has happened between the 1815 Edition and the 1828 Edition is that the British connection with Kutch has been made firmer; the British have started controlling, or at least making attempts to control a part of the Rann, and the Rann is being separately mentioned, so that if one now says sandy desert, which has come to be the particular name of the Thar area, one can combine the two. Hamilton, sitting in London, consults manuscripts, reads MacMurdo and finds references to the "sandy desert"; he reads another account of the British going up to Parkar to protect Kutch; he reads a third account where the sandy desert is Thar and says the Rann as a whole is to be included; and changes the length from 110 miles to 160 miles.

Pakistan has also pointed out the differences between the 1820 version and the 1828 version. The 1820 version refers to the 24th and 25th parallels – which would exclude the mainland of Kutch – and that is corrected in the 1828 version. The length is increased from 140 miles in the 1820 version to 160 miles in the 1828 version. Actually neither is accurate if the intention is to include the whole Rann; it is the mainland figure of length. Hamilton was confused.

India, while conceding that the co-ordinates in the 1828 Edition are different from those in the 1815 Edition – both of them being strictly incorrect – claims that there is no difference in substance though there is in the wording. The description in 1828 makes it clear that the sandy desert referred to in the 1815 Edition is the desert of Thar Parkar which begins at the northern edge of the Rann. The description in 1815 has to be read consistently with the expanded description of 1828. Even if the 1828 version is read as being a complete reversal of what was said in 1815 it means that Hamilton has corrected himself, and what he has said subsequently is obviously correct, with regard to the other evidence. The length of 160 miles and the breadth of 95 miles given in the 1828 version

makes up the area of 15,200 square miles and gives a better result, as the area of 6,500 square miles of the mainland of Kutch and the area of 9,000 square miles of the Great and Little Rann together come to 15,500 square miles.

As stated in the Preface, Hamilton had access not only to published documents but also to various governmental records and manuscripts in the possession of the Board of the East India Company. It is said that MacMurdo does not give the account which is given by Hamilton and MacMurdo, correctly understood, is saying expressly that the northern limit of Kutch is the edge. It is quite possible that Hamilton may have understood MacMurdo in another way or it may be that he discarded MacMurdo's account as not being correct, because he had plenty of other material. All that he did in 1828 was simply to explain what he had put very briefly in 1815.

Hamilton had resided in India for ten years before he wrote his 1820 book, though the exact period of residence is not known.

Volume II of the 1828 Gazetteer deals with Sind only and will be referred to hereafter when the territory of Sind is discussed.

(iv)–(vi) Thornton, *Gazetteers of the Territories under the Government of the East India Company and Native States on the Continent of India,* Vols. I, II and IV, 1854 (Ind. Docs. TC 12, C-23 and C-40):

In this context, it is convenient to deal also with the two other works of Thornton, namely *Statistics of the Native States of India, 1852* (Pak. Book 38) and *Statistical Papers Relating to India, 1853* (Pak. Book 39).

India refers to Volume I of Thornton's Gazetteer only for the purpose of mentioning how it was compiled. The Gazetteer says that it is "Compiled by the Authority of the Hon. Court of Directors and Chiefly from Documents in their Possession". The Preface to this volume says:

> "The present work is the first that has ever aspired to the character of completeness as a 'Gazetteer of the Territories under the Government of the East India Company and of the Native States on the Continent of India'. The task could never have been executed but for the patronage which the Court of Directors were pleased to bestow upon the undertaking... The vast mass of exclusive information contained in the records of the East India Company has been at his disposal...". (*Op. cit.*, p. iii.)

India lays stress on the observation that the mass of exclusive information contained in the records of the East India Company had been at the disposal of Thornton in the preparation of the Gazetteer.

Volume II describes Kutch as bounded on the north-west and north by the Province of Sind, extending, inclusive of the Rann, from latitude 22° 47′ and 24° 40′ and from longitude 68° 26′ to 71° 45′, the greatest length from east to west being 205 miles and the breadth from north to south being 110 miles and the area exclusive of the Rann being 6,764 square miles. India says that the description clearly indicates that the Rann is a part of Kutch but is not counted for the purposes of the area which is indicated as that of the mainland.

Pakistan points out that in his work *Statistical Papers relating to India* prepared in 1853 (Pak. Book 39), Thornton gives the area of Kutch as 6,764 square miles, without any reservation about the Rann. In his Gazetteer, he seems to follow Hamilton's Gazetteer in the statement that the Rann is a part of Kutch but when it comes to his own statistical data, which were submitted

to the Court of Directors, he does not make any reservation regarding the Rann. Thornton's *Statistics of the Native States of India* also gives the area without any reservation, and so does Volume I of the Gazetteer (Ind. Doc. TC 12).

In Volume II of the Gazetteer, the east-west length of Kutch is given as 205 miles and, if this length is measured on Indian Map B-1, it falls in the extreme corner of the Little Rann but having regard to decided cases in respect of this corner, the Gazetteer cannot be right. The description also shows that the Rann goes westwards up to the Khori River and no further.

Pakistan refers to certain inconsistencies in Volume II of the Gazetteer. Describing Banni, it says "the entire frontier is fringed by a broad belt of luxuriant pasturage called the Bunnee". (p. 44.) So the province includes the mainland only. Then, describing the Little Rann, it says: "The smaller Rann is situated between the territory of Cutch and that of Gujarat...". (p. 46.) The Little Rann is situated between the territory of Kutch and the territory of Gujarat, so it is not itself the territory of Kutch.

Volume I of the Gazetteer mentions Baliari as "a town on the northern boundary of the Great western Runn of Cutch" (p. 224); it does not say northern boundary of Kutch but says northern boundary of the Rann of Kutch.

As regards the Preface to the Gazetteer in Volume I, quoted by Pakistan, Pakistan observes that Thornton is saying that the East India Company were very kind and that they had made available all their documents. The Preface also says "how far I have succeeded in doing so the reader will judge". Each one of these Gazetteer editors acknowledges the patronage of the Company but they take the responsibility upon themselves. The Company extends its blessings, makes the material available to a private person who wants to do research, and he does so on his own responsibility but with the materials made available to him. He dedicates his work to the Company and also makes it clear in the Preface that the responsibility is his. These Gazetteers are not official publications.

As regards the statements in the Statistical works of Thornton (Pak. Books 38 and 39), India's reply is that these statistics are concerned with the figures of population and revenue and therefore the effective part is the part that is mentioned and the area of Kutch is given as 6,764 square miles without any reservation. In fact, it may even come to this: a subordinate official may write with reference to statistics of this sort that the area is so much, but a higher official, correcting it, might like to add "exclusive of the Rann". The contrary may be equally true. When dealing with statistics which refer to population and revenue, Thornton puts down the effective area, but in describing Kutch he makes it clear that the Rann is a part of it.

(vii) *Gazetteer of the Bombay Presidency*, Vol. V, Cutch, Palanpur and Mahi Kantha, 1880 (Ind. Doc. C-5):

This Gazetteer mentions the estimated area of Kutch as 6,500 square miles, exclusive of the Rann.

Pakistan says that the Gazetteer also describes Kutch as extending up to the 24th degree of north latitude only. The expression "exclusive of the Rann" would refer to the Rann lying below that latitude. The Gazetteer also gives a list

of talukas of Kutch and their areas and the total area of the talukas of Kutch does not include any part of the Rann. There is also a reference that "along the north coast of Cutch within the limits of the Rann are four islands beginning from the east Chorar, Bela Khadir and Pachham" – indicating that Kutch extended up to the 24th parallel only.

(viii) *Gazetteer of the Bombay Presidency*, Vol. V-B, Cutch, Palanpur and Mahi Kantha, 1905 (Ind. Doc. C-50):

India states that this Gazetteer supplements the information contained in the Gazetteer of the Bombay Presidency 1880 (Ind. Doc. C-5) by more recent statistics. It also contains notes for revision of the parent volume.

It describes the area of Kutch as 7,616 square miles, exclusive of the Rann, 9,000 square miles belonging to the State. There is also a note that the area was increased from 6,500 square miles in 1901–02 to accord with the measurements of the survey which had been in progress since 1873. Though the survey took place quite early and the area was ascertained, in subsequent documents the pre-survey area is still mentioned.

Pakistan says that the statement that 9,000 square miles of Rann belong to Kutch is contradicted by the Poong Bet case, the Keswala Bet case and the Kennedy Report. The eastern corner of the Rann is admitted by India to have belonged to other States.

Pakistan points to the statistical table in this volume entitled Table 1: General Statistics by the Talukas. The total area of the talukas given therein comes to 7,616 square miles. Pakistan, however, does not make use of this statement for the purposes of limiting Kutch. It is pointed out only to show that, although these are the taluka limits Kutch can extend beyond them into the Rann and likewise there will be taluka limits on the Sind side, yet Sind will extend beyond those limits.

(ix) *Gazetteer of the Bombay Presidency*, V-B, Cutch, Palanpur, and Mahi Kantha, 1914 (Ind. Doc. C51):

The area of Kutch in this Gazetteer also is stated to be 7,616 square miles, exclusive of 9,000 square miles in the Rann belonging to the State.

The comments of Pakistan on the Bombay Gazetteer of 1905 also apply to this Gazetteer.

(x) Imperial Gazetteers:

(*aa*) *The Imperial Gazetteer of India*, 1881 (Ind. Doc. C-26):

The limits of Kutch in this Gazetteer are described as extending, inclusive of the Rann, from latitude 22° 47′ to 24° 40′ of north latitude, and from 68° 26′ to 71° 45′ east longitude; the greatest length from east to west is said to be 205 miles and the breadth from north to south 110 miles; the area of the State is given as about 6,500 square miles exclusive of the Rann (pp. 523–4). India draws attention to the fact that this Gazetteer gives the limits as inclusive of the Rann and the area as "exclusive of the Rann". The description is wholly correct and this shows that for various purposes with which the Gazetteer was directly concerned, the important part of the State is solid land or the mainland.

Pakistan points out that the description in this Gazetteer is exactly the same as that of Thornton in this Gazetteer of 1854 (Ind. Doc. C-23), except for the figure of 6,500 square miles in replacement of 6,764 square miles. Whatever comments were made in respect of the said Gazetteer of Thornton, would apply to this Gazetteer as well.

Pakistan states that other editions of the Imperial Gazetteer contradict the statement made in the imperial Gazetteer of India 1881 (Ind. Doc. C-26), viz.,

(*bb*) *The Imperial Gazetteer of India*, by W. W. Hunter, Vol. IV, 1885 (Ind. Doc. C-27):

This Gazetteer describes the limits of Kutch as extending, inclusive of the Rann, from 20° 47′ to the 24th degree of north latitude, the east-west length being 160 miles and the north-south breadth being 35 to 70 miles, and the area of the State is said to be 6,500 square miles, exclusive of the Rann (p. 57). Pakistan says that the reference to 20 degrees is a misprint and should be 22 degrees but otherwise the limits, described as inclusive of the Rann, give a clear statement and the expression "exclusive of the Rann" means exclusive of the Rann lying below the 24th degree of north latitude.

(*cc*) *The Imperial Gazetteer of India*, Vol. I, 1907 (Pak. Book 50):

This Gazetteer describes Kutch as an island standing in the midst of the Rann (p. 38).

India's answer to this is that this is a description which merely shows the lay-out, the physical geographical position as it appears to the eye, giving the picture that Kutch is an island separated from the Rann.

(*dd*) *The Imperial Gazetteer of India*, Vol. XXII, 1908 (Pak. Book 35):

In this Gazetteer, the limits of Kutch are stated to extend, exclusive of a portion of the Rann, from 22° 47′ to the 24th degree of north latitude, comprising a belt of land 160 miles in length and 35 to 70 miles in width, with an area, exclusive of the Rann, of 7,616 square miles.

(*ee*) *The Imperial Gazetteer of India*, Vol. XI, 1908 (Ind. Doc. C-28):

The limits of Kutch are described in this Gazetteer as extending, exclusive of a portion of the Rann, from 22° 47′ to the 24th degree of north latitude (p. 74).

(*ff*) *The Imperial Gazetteer of India*, Provincial Series, Bombay Presidency, Vol. I, 1909 (Pak. Book 34):

Kutch is described as an island cut off from the mainland by the Rann and lying between 22° 47′ and the 24th degree of north latitude (p. 2), India's comment is the same as on Pakistan Book 35.

(*gg*) *Imperial Gazetteer of India*, Provincial Series, Bombay Presidency, Vol. II, 1909 (Ind. Doc. C-29):

This Gazetteer describes the limits of Kutch as lying between 22° 47′ and the 24th degree of north latitude, exclusive of a portion of the Rann, with an area, exclusive of the Rann, of 7,616 square miles (p. 326). The comments of India are the same as on Pakistan Books 34 and 35.

(*e*) *Aitchison's Treaties*

A series of editions of a work called *A Collection of Treaties, Engagements and Sunnads, relating to India and Neighbouring Countries*, was published. This

collection was compiled by C. U. Aitchison, Under Secretary to the Government of India in the Foreign Department, and was revised and reprinted from time to time on the authority of the Foreign and Political Department of the Government of India. India describes this publication as a famous work of standard reference which was repeatedly cited and referred to as containing authentic information. The book was intended to be a complete collection of Treaties, Sanads (grants of land) and engagements relating to India and neighbouring countries.

The First Edition of the book is submitted as Indian Document TC 13 and is of 1864. It describes the estimated area of Kutch as 6,500 square miles, exclusive of the Rann of Kutch, which covers 9,000 square miles. The next Edition on record is of 1876 (Ind. Doc. TC 14) and describes Kutch in the same terms. The 1932 Edition, which is submitted as Indian Document C-8, mentions the area of Kutch as 7,616 square miles, exclusive of the Rann (p. 84). India says this official and authoritative work includes the entire Rann in Kutch.

Pakistan has produced as Pakistan Book 73/5 an intermediate Edition of 1909, which gives the estimated area of Kutch as 7,616 square miles, without any reservation as to the Rann.

With reference to the publications relied upon by India, Pakistan says that they do not state that the whole Rann belongs to Kutch, all that is stated is that the area given does not include some area of Kutch in the Rann, without stating how much or which area is not included. The expression "exclusive of the Rann" suggests some indefiniteness and this was being used because it had not been ascertained finally as a settlement which area and how much area belonged to Kutch. The expression appears in earlier editions, is then dropped and reappears – suggesting that the exclusion is a matter of considerable doubt. Further, Aitchison is not in a position to settle rights and his statements do not carry the matter further.

India replies to Pakistan by saying that Aitchison put down on paper only what he knew and if it was a matter of uncertainty he would have said so.

(*f*) *Some Published Works*

(i) In a Paper entitled *Memoir to Illustrate a Geological Map of Cutch* prepared in 1836, Captain C. W. Grant, Bombay Engineers, mentioned that Kutch was situated between the 22nd and the 24th degree of north latitude and the 68th and the 70th degree of east longitude, bounded to the north by the Great Rann, with its extreme length from east to west about 180 English miles and extreme breadth of 50 miles, containing about 6,500 square miles, independently of the Great Rann "which ought, however, to be considered as a part of the province" (pp. 403–4). India says that the area of Kutch is described as calculated independently of the Great Rann, meaning that the Great Rann was a part of Kutch.

Pakistan points out that Grant also says that Kutch is bounded to the north by the Great Rann. Whoever Captain Grant might be, nobody but the competent British authorities could decide the territory of Kutch. The British were attempting to extend their control over the Rann, and what they would do, what that control would be was their business. They might ultimately decide to cede it to

Kutch or even to Nagar Parkar. No one would know at that Stage what would ultimately be the case. So if in 1836 Captain Grant said that the Rann ought to be regarded as belonging to Kutch, it is an opinion based upon something which is not known. He says "ought, however, to be considered as a part of the province". He does not give it to Kutch. Apart from that, no one could find out with certainty what Grant meant by that expression. He describes the Province of Kutch as limited to the 24th degree of north latitude and bounded by the Rann.

(ii) In his *Memoir on the Kutch State* (Ind. Doc. C-3) submitted to the Government in 1854, Lieut. S. N. Raikes, who was the Assistant Political Agent, Kutch, described Kutch as bounded on the west, north-east and south-east by the Rann, with an estimated area of 6,500 square miles, exclusive of the Rann of Kutch, which may be estimated at 9,000 square miles (p. 84). According to India, it is natural for visitors and explorers to pay attention primarily to the firm land and then to say that the area is exclusive of the Rann which would ordinarily be included in the area of the province.

Pakistan points out that Raikes describes the Rann as a bounding entity. Attention is drawn to another work of 1856 by Raikes, *Memoir on the Thurr and Parkur Districts of Sind* (Pak. Book 24), in which he more than once describes the Rann as separating Thar Parkar from Kutch. He was also the District Magistrate of Thar Parkar and in describing the advantages of the outpost established at Parkar to combat the banditti, he said that the result of the outpost was the saving of a great expense, "to say nothing of the harrassment of men up and down the frontier along the edge of the Rann after the banditti". Attention is drawn to the word "frontier" and it is said that the British would no longer have to patrol the frontier to guard it. The concept of Raikes may not be very clear at some stages and the same confusion with which he has been talking of Parkar might exist in his own mind where the Rann was concerned. The position is clear as Raikes himself, under the control and command of the Commissioner in Sind, performed acts of jurisdiction in Sind. Raikes used the phrase that Kutch and Sind are conterminous provinces but with a dividing entity in between, and the statement "which however may be considered to belong" is a statement which, if Raikes had given it a little more thought, he would have amplified and said this does not mean in its entirety, or, he might have said he did mean in 1854 "in its entirety", and that was his suggestion or understanding, but as soon as the implications for the remaining parts and his own contact were pointed out to him he recognised that this could not be true. Apart from that, he does not say that the Rann is a part of Kutch, he does not say it has been ceded, he does not make a historical statement. He merely mentions that it should be considered to be a part of the province geographically – and not in a political sense. If, in his opinion, the Rann should be considered as a part of Kutch, that does not give title to Kutch.

India points out in reply that along with his Memoir, Raikes also wrote in 1854, *Brief Notes relative to the Kutch State* (Ind. Doc. C-3), in which he described the estimated area of Kutch as 6,500 square miles, exclusive of the Rann of Kutch, estimated at 9,000 square miles (p. 3). Both the Memoir and the Brief Notes were submitted to the Government. Raikes was carrying on the

administration of Thar Parkar and he was the person who ought to have known his jurisdiction; he says that the Rann was a part of Kutch. There is no confusion in his mind. Jacob, the Political Agent, Kutch, adopts the statement of Raikes and approves it as complete and correct and he repeats that part of it himself (Ind. Doc. TA 10). The use of the words "frontier" and "bounded" have to be understood in the geographical sense.

As regards Raikes's *Memoir on the Thar and Parkar Districts of Sind* (Pak. Book 24), India points out that Raikes describes Thar as "a strip, as it were running along the northern border of the Great Rann of Kutch" (p. 2), and describes Kutch as a "conterminous principality" (p. 15).

The Parties have also referred to some other material relating to Raikes.

Pakistan points out that, in a letter of 1853 by Raikes, printed in "Papers regarding the Revenue Settlement Effected in the Districts of Omerkot & Thurr" (Pak. Book 17), Raikes has observed that Thar Parkar District was completely separated from Kutch by the Rann (p. 89).

In another letter of 1856 by Raikes (Pak. Doc. B.177), Raikes desires his successor to meet him at Khavda "just on this side of the Balleearee Runn". Pakistan argues that the thinking is that there are different sections of the Rann: one bit being the Baliari Rann, another being the Parkar Rann, etc. According to India, this indicates the position of the place where Raikes and his successor were to meet, which is that part of the Rann which is opposite Baliari.

The next documents are a letter written by the Commissioner in Sind to the Political Agent, Kutch, in 1853 (Pak. Doc. B.296) and a letter of Raikes to the Commissioner in Sind of the same year (Pak. Doc. B.297). Pakistan discusses these two letters thus: In reply to an enquiry of the Rao of Kutch concerning the imposition of certain customs duties across the Khori Creek, the Commissioner replied by Pakistan Document B.296. The position at that time was that while no duty was charged on goods in transit through the Rann between Kutch and Sind, goods in transit from Lakhpat via Kotri to Sind were subject to taxation. The Rao evidently thought that it affected his trade adversely and so he made some enquiries and the Commissioner replied that the levy of customs on the Sind frontier near Lakhpat was correct as the goods entering Sind across the Khori Creek, which separated Kutch from Sind, constituted imports by sea and were therefore liable to the levy. Raikes objected to this in his letter in Pakistan Document B.297. In the course of his letter, he observed that Kutch and Sind were divided by the Rann.

India's reply is that the geographical position is stated, particularly since difficulties involved in making certain arrangements were being discussed. But there was nothing inconsistent in saying this, notwithstanding that the Rann belonged to Kutch as he stated elsewhere.

There are other documents concerning Raikes: Pakistan Documents A.13, A.14, B.28, B.29, B.30 and Indian Documents A-70 and A-71, which are discussed elsewhere.

(iii) and (iv): Two editions were issued of a publication entitled *The Ruling Princes, Chiefs and Leading Personages in the Western India States Agency*, one being of 1928 (Ind. Doc. TC 1) and the other being of 1935 (Ind. Doc. TC 75).

This publication was prepared at the desire of the Agent to the Governor-General in the States of Western India, and India relies upon the statements in the two editions describing the area of Kutch as exclusive of the area of the Rann, which is mentioned as being about 9,000 square miles (pp. 15 and 16, respectively). According to Pakistan, a statement in a publication of this kind would not be very helpful for the purpose of determining rights. Pakistan observes that it gives only a statistical reference and also contains reference to the 24th parallel. The publication also gives the area of Dhrangadhra as exclusive of the area of its portion of the Rann, indicating that the entire Rann did not belong to Kutch. Maps are attached to both editions. These maps are discussed elsewhere.

(*g*) *Memoranda on Native States in India*

The Government of India published a series of annual editions of a work entitled *Memoranda on Native States in India.* The Editions for the years 1907, 1909, 1910, 1912, 1915, 1926, 1934, 1939 and 1940 are on record (Ind. Docs. TC 38 (pp. 14–15), TC 39, (pp. 188–9), TC 40, (pp. 172–3), TC 41 (pp. 144–5), TC 42 (pp. 164–5), TC 43 (Pak. Books 79, 36 and 78). Except in the Editions of 1939 and 1940, the area of Kutch is described as exclusive of the Rann, and this entry is relied upon by India. The 1939 Edition specifies the area without reference to the Rann. The Edition of 1940, in giving the area of the Morvi State, indicates that a portion of the Rann belonged to Morvi.

(*h*) *Brief Notes etc., on Kutch*

(i) Memorandum prepared by the Political Agent, Kutch, 1875 (Ind. Doc. A-37):

On the eve of the visit of the Prince of Wales to India, he wished that information regarding the Indian Princes and the Chiefs of India should be made available to him. Accordingly, the Government of India sent a circular letter to all the Provincial Governments to call for the information (Ind. Doc. A-37). Annexed to this letter is a Memorandum produced by India, which, *inter alia,* contains personal particulars of the Rao of Kutch, and in which the area of Kutch is mentioned as 6,500 square miles, exclusive of the Rann. India says that this is clear information about the territory of Kutch; the dry land is 6,500 square miles leaving aside the Rann. Pakistan says that this is only a statistical reference.

(ii) Brief Notes on Kutch, 1887 (Ind. Doc. A-57):

The Political Agent, Kutch, forwarded to the Government of Bombay certain papers containing information regarding Kutch for its perusal. The papers contained one entitled Brief Notes on Kutch, describing Kutch as having an area of 6,500 square miles exclusive of the Rann. India says that it was a British officer who made the Report indicating that the Rann was a part of Kutch.

Pakistan's comments are that the letter of the Political Agent, Kutch merely forwards some printed matter, which is stated to have been printed at the Kutch Darbari Press. In 1885, the Government of Bombay was anxious that the question of boundary in the Rann should not be raised (Pak. Doc. B.10). The Notes do not also say that the Rann belonged to Kutch. The Political Agent could not clarify the position in view of the Resolution of the Government of

Bombay (Pak. Doc. B.10), and he kept quiet about it. The title to the Rann is thus not affected by the fact that the Political Agent forwarded to the Government of Bombay a piece of paper printed at the Darbari Press.

(iii) List of Feudatory Chiefs and Nobles of India who are expected to be in England on the occasion of the Celebration of the Jubilee of Her Majesty the Queen Empress of India (Ind. Doc. TA 14):

Since this document refers to the Jubilee of Her Majesty the Queen, it is said to be of 1887 and, according to India, prepared by the Government of India. The document describes Kutch as exclusive of the Rann, which is construed by India as meaning that the entire Rann belonged to Kutch.

(iv) Memorandum of the Political Agent, Kutch (Ind. Doc. A-8):

On the eve of the Viceroy's tour of India, the Political Agent, Kutch, in response to a letter of the Military Secretary to the Viceroy submitted a Memorandum in which he described Kutch as having an area of 6,500 square miles, exclusive of the Rann, the area of which was 9,000 square miles. The information was to be printed in a book for the Viceroy giving a short account of the places of interest.

Pakistan's comment is that the batch of papers accompanying the letter of the Military Secretary is presumed to be from the Political Agent, Kutch, as the two were found together. There is no covering letter of the Political Agent sending the papers. The Note is undated and unsigned.

India agrees that there is nothing to show that the papers were sent in response to the letter but they are found along with it on a file in the India Office Records.

Pakistan says that the Note is merely a statistical reference.

(v) Brief History of Kutch Agency, 1901 (Ind. Doc. A-58):

According to India, in 1901, the Government of Bombay submitted to the Government of India, at its request, Brief Histories of the Indian States under the political control of the Government of Bombay, collected up to 15 December 1901. The Brief History regarding Kutch mentioned that its area was 6,500 square miles, exclusive of the Rann, the area of which was about 9,000 square miles.

The comments of Pakistan are the same as those on other statements of this kind, with the addition that, once a statement like this has been made in a Gazetteer or an Administration Report or somewhere, it has a tendency to be repeated.

India contends that although sometimes a statement has a tendency to be repeated, there were occasions when the matter was looked into again the mind was applied and the statement still allowed to stand. The fact that there were statements in which the reservation as to the Rann was not expressly mentioned, and a change was made subsequently, shows that someone applied his mind. The Brief History was sent to be looked into, to be corrected and to be brought up to date, and this was brought up to date and sent. Many more copies may have been required and hence the History was printed.

Pakistan further says that the Memorandum deals with two entities, Kutch

and the Rann. It gives the area of Kutch exclusive of the Rann and then gives the area of the Rann separately. No interrelationship such as "belonging" is mentioned.

(vi) Brief History of Kutch (Ind. Doc. A-59):

In 1905, the Government of India required a Memorandum or Brief History regarding Kutch for the information of the Viceroy on the occasion of the visit of the Rao of Kutch. Since the last Memorandum was received in 1901 (Ind. Doc. A-58), a telegram was sent to the Government of Bombay asking it to send a Brief History revised up to date. The Government of Bombay replied that the 1901 Brief History was up to date. The Government of India then prepared a Brief History in which it was repeated that the area of Kutch was 6,500 square miles, exclusive of the Rann.

Pakistan points out that in the letter sent by the Government of Bombay it observed that no events of importance had taken place in the Kutch State since 1901 and that the History sent in 1901 was, to all intents and purposes, up to date. The same thing was resubmitted without any addition.

India emphasises the fact that in this affair both the Government of Bombay and the Government of India were Parties to the statement.

Pakistan's further comments are as on Indian Document A-58.

(vii) Notes on Kutch – 1916 (Ind. Doc. A-60):

When the Governor of Bombay was to visit Kutch in 1916, the Kutch Darbar prepared certain Notes on Kutch and forwarded them to the Political Agent who transmitted them to the Government of Bombay. These Notes mention the area of Kutch as 7,616 square miles, exclusive of the Rann. A copy of the Notes was also sent directly to the Private Secretary to the Governor.

Pakistan draws attention to another statement where Kutch is described as bounded on the north by Sind and its limits as extending from 22° 47′ to the 24th degree of north latitude, exclusive of a portion of the Rann, and contends that Kutch includes a portion of the Great Rann to make it conterminous with Sind, its limits being from 22° 47′ to the 24th degree of north latitude.

(*i*) *Miscellaneous References*

(i) Shortt, Political Agent, Kutch, Preface to a Memorandum, 1865 (Pak. Doc. B.300):

Pakistan relies upon this document as it mentions Kutch as separated by the Rann of Kutch. India, however, points out that it also gives the area of Kutch as 6,500 square miles, excluding the Rann. The document has been discussed above.

(ii) Wynne, Preliminary Notes on the Geology of Kutch, 1869 (Pak. Doc. A.10):

Wynne observed in these Notes that Kutch is isolated from the mainland and Thar by the Great and the Little Rann. Pakistan relies upon this observation while India points out that Wynne also observed that the area of Kutch, including the Rann, is estimated as being equal to half that of Ireland – which observation must necessarily mean that the entire Rann belongs to Kutch. The Notes have been discussed in detail above.

(iii) Letter from S. M. Shah, District Superintendent of Police, Thar Parkar, to the Police Commissioner, Kutch, 1923 (Ind. Doc. A-68):

In 1923, villages in Kutch had been looted by dacoits who made their way to Sind. The Police Commissioner, Kutch, sent intimation to the District Superintendent of Police, Thar Parkar, to keep a watch on the dacoits. The District Superintendent of Police, Thar Parkar, while complaining of slowness and inaction on the part of the Kutch Police, stated in his letter (Ind. Doc. A-68), as follows:

> "The Rann belongs to Cutch State and if the Cutch Police had followed up the tracks they would not only have been able to locate the gang but would also possibly have been able to cripple it with the assistance of the Nagar Parkar Police."

India says that this statement made by the District Superintendent of Police, Thar Parkar, establishes that the Rann was a part of Kutch.

According to Pakistan, the subject of the correspondence of which this letter is a part was to discover whether it was the Kutch Police or the Thar Parkar police who were at fault. This letter reads like an explanation by the police of Thar Parkar, clearing themselves of delay and making out that the blame rested on the Kutch side. The question of boundary in the Rann between Sind and Kutch remained unsettled for many years and confusion prevailed in many quarters regarding it. If, in these circumstances, the Superintendent of Police, Thar Parkar, made a statement which helped him to put responsibility on the Kutch police, it cannot be the last word as to the title to the northern half of the Rann. Moreover, the context in which the word "Rann" was used by the Superintendent of Police suggests that he might have been thinking of that part of the Rann where the tracks of the outlaws were found by the Kutch police and that part adjoins the mainland of Kutch. In 1898, the Commissioner of Sind said that the Rann for police purposes was to be regarded as British (Pak. Doc. B.47). The District Superintendent of Police, Thar Parkar, seems to be unaware of that in 1923. The statement does not indicate that a clear concept exists in the mind of the District Superintendent of Police that right up to the northern edge the whole Rann must be regarded by him as belonging to Kutch. Even if he has a misconception in his mind, that cannot affect the sovereign rights in the territory.

India replies that the District Superintendent of Police is the head of a District and he knows his jurisdiction as such, and the attitude he takes is that strictly speaking the Rann belongs to Kutch and if the Kutch police had been active, the matters would have been better. The statement "the Rann belongs to Kutch" is plain enough.

India refers to two documents from a Pakistan file in which the relevant correspondence appears (Ind. Docs. TA 19 and TA 20). According to India, Indian Document TA 19 envisages a scheme for stationing police at several places along the edge of the Rann to combat dacoits and these arrangements are described as "defensive arrangements...on the Sind boundary in connection with the operations to be taken against the dacoits gang". The scheme is proposed by the Deputy Superintendent of Police, Thar Parkar, and he agrees to the position that the northern edge of the Rann is the limit of British territory. India also argues that this shows that the District Superintendent of Police

was not trying to throw the blame on Kutch when he said that the Rann belongs to Kutch. The other, Indian Document TA 20, is a letter of 1923 from the Deputy Inspector General of Police for Sind to the Commissioner in Sind. It indicates that the special police employed "on the Cutch Frontier" in connection with the operation against the dacoits were using camel saddles borrowed from Khairpur. As these saddles were urgently required in Khairpur State, the District Superintendent of Police, Thar Parkar, was directed to return them to Khairpur urgently but the Deputy Inspector General of Police requested the Commissioner in Sind that the Khairpur State Authorities may be asked to send the saddles again on loan to the District Superintendent of Police, Thar Parkar. Reference to "Cutch Frontier" where the special police were employed must mean that the northern line along the Rann was regarded by him as the Kutch frontier. There is also a reference to a subsequent order of 1924 mentioning that the capture of the majority of the gang of dacoits had left no justification for the retention of a large force "on the Cutch border" and that the additional police placed on special duty "on the Cutch border" might be withdrawn; the District Superintendent of Police, who is the same officer who wrote in Indian Document A-68 that the Rann belonged to Kutch, was asked to report how he proposed to utilise the men and he made certain proposals. This correspondence shows that both the District Superintendent of Police and his superiors were all working on the assumption that the border of Kutch lay along the northern edge of the Rann and that the whole Rann was undoubtedly within Kutch territory.

Pakistan produced some other documents from the same file, Pakistan Documents B.319 to B.323, to controvert the implications of Indian Documents TA 19 and TA 20, relied upon by India. In Pakistan Document B.319, the Commissioner, Northern Division, wrote to the Government of Bombay making proposals for organising a good intelligence service and strong outposts distributed at strategic points for hunting down dacoits; one of the proposals was that the Sind authorities should establish three motor car outposts at selected places on the northern edge of the Rann. The District Magistrate, Hyderabad, in his Report to the Assistant Commissioner in Sind, expressed himself in favour of the above proposal but observed that the success of the scheme would depend also upon the full co-operation of the Kutch Darbar, who should establish an effective cordon "across the neck of Cutch, a few miles to the west of Bachan". Pakistan says that a preventive position was suggested across the neck of Kutch to the west of Bachan, that is, on the southern side of the Rann. Pakistan Document B.322 is the Weekly Report on Kutch Operations, in which it is said, *i.a.*, that Rapar in Kutch would be the headquarters of the operations and that the Sind sowars were to be stationed at Gedi in Kutch and to be considered a detachment of the Rapar force. Pakistan says that the mounted policemen to whom the orders in Indian Document TA 20 related are these sowars stationed at Gedi. Pakistan Document B.323 is a letter from the Commissioner, Northern Division, to the Government of Bombay reporting that the entire gang of dacoits had been put out of action and that he was winding up the special operations in Kutch and, to start with, was sending back the Sind police and sowars. Pakistan argues that the reference to the "Cutch Frontier" in Indian Document TA 20 is

thus a reference to the southern edge of the Rann and not the northern edge of the Rann as suggested by India.

India explains that Indian Documents TA 19 and TA 20 refer to operations different from the mixed operations mentioned in Pakistan Documents B.319 to B.323. Attention is drawn to the statement in Indian Document TA 19 that the armed police had been distributed along the towns and villages along the frontier either to strengthen the existing police, or to afford protection to those villages where no police were stationed and that in all, 67 extra police were employed on this special duty. The places where the police were stationed are described and it is perfectly plain that the border on which they were posted was none other than the northern edge of the Rann. It is also pointed out that the names of the police withdrawn from the Kutch border according to Indian Document TA 20 were those stationed at the places along the northern edge of the Rann mentioned in Indian Document TA 19. According to Pakistan Document B.319, the proposal was that Sind should establish three motor car outposts at selected places on the northern edge of the Rann. The Sind sowars and Sind police sent to Kutch as mentioned in Pakistan Document B.322 were different from those mentioned in Indian Documents TA 19 and TA 20. The withdrawal of the police mentioned in Indian Document TA 20 took place in March 1924 while the withdrawal of the sowars and the police mentioned in Pakistan Document B.323 took place in January 1924.

(iv) Letter from the Dewan of Kutch to the Resident in the States of Western India, 1938 (Pak. Doc. B.167):

During Osmaston's Survey, representatives of Kutch, Wav and Sind made separate claims regarding their territorial limits. When the Dewan of Kutch heard that Sind had made a claim to half the Rann he addressed a letter to the Secretary to the Resident for the Western India States in which he observed:

> "The Darbar therefore consider that the present claim of the Sind authorities has no validity and there was never any doubt that the entire Rann belongs to Kutch."

This letter is discussed in Chapter V, Section 8.

(v) White Paper on Indian States, 1950 (Ind. Doc. TC 49):

In 1948, the Government of India published a compilation called the White Paper on Indian States (Pak. Book 37). Pakistan relies upon this publication which says that the area of Kutch is 8,641 square miles (p. 19). Pakistan points out that the publication was issued by the Government of India at a time when the direct controversy between India and Pakistan over the Rann of Kutch was actually in progress and hence does not suggest that this would form an admission on the part of the Government of India. It would be a curious thing if the Government of India were to admit that the area is so much, and yet carry on correspondence with Pakistan. Pakistan has submitted this evidence as an illustration of how an entry, once made, is repeated.

India draws attention to the revised White Paper (Ind. Doc. TC 49), in which Kutch is described as having an area of 17,249 square miles, which includes the Rann (p. 47).

(vi) *Columbia Encyclopaedia*, 3rd Edition, 1963 (Ind. Doc. C-31):

This work describes Kutch as having an area of 17,000 square miles (p. 1137).

In addition to the various documents referred to above, which specify the area of Kutch without any reservation regarding the Rann, Pakistan has drawn attention to two or more documents in which similar references to the area of Kutch are made. They are:

(*aa*) Memorial submitted by the Ruler of Kutch to the Secretary of State for India, 1869 (Pak. Doc. A.10 and Ind. Doc. TC 15):

The following passage appears in this Memorial:

> "I do not understand the policy of a measure by which it is intended to create in a province hardly larger than Yorkshire in area and containing only one-fourth of the population of that country, so numerous inefficient courts of justice, armed with absolute and undefined powers and presided over by such persons as the Bhayads without any adequate check." (*Op. cit.*, p. 47.)

In the margin, the area of Kutch is mentioned as 6,500 square miles, population between 400,000 and 500,000, area of Yorkshire 6,000 square miles, population 1,800,000. Thus, Pakistan says, the area of Kutch is compared to that of Yorkshire and is mentioned as 6,500 square miles only.

India has explained the background of this Memorial thus: The Political Agent questioned the right of the Rao to decide on cases of dispute between two tenants of one of the Bhayads. A draft agreement was put to the Rao which he did not like, the point being that many of the Bhayads owned territory. The territory was that of the Rao but the Bhayads were semi-independent in the sense that they exercised jurisdiction of various kinds within their own limits while owing allegiance to the Rao. Ultimately, in 1872, a special Bhayad Court was set up to deal with cases of this kind, but the draft of the agreement had been submitted to the Rao already in 1869. The Rao's reaction to the draft was in the form of the Memorial in question. Though the area of Kutch was described in this Memorial, the size of the whole State was not a matter of moment with regard to the subject matter of the draft agreement, which was trial by numerous courts with undefined powers, presided over by the Bhayads, for a country which had a small population within 6,500 square miles. What was relevant was that the population and the description of the area were restricted to the effective area for the purpose, as there was no population in the Rann. The Rao pointed out that for a country with a certain area and a certain population, it was unreasonable to have numerous courts.

Pakistan replies that in later years the Rao was so particular that, even if nothing turned upon it, the area was mentioned as exclusive of the Rann and he could have easily said in the Memorial that the area was 6,500 square miles exclusive of the Rann. Effective or non-effective, if the area of Kutch was mentioned by him as such and such, that must be the area. He was making an issue of it and was making a comparison with Yorkshire. The awareness of the need for putting in the reservation had not yet arisen.

(*bb*) Menon, *Story of the Integration of the Indian States, 1956* (Pak. Book 21):

Mr. Menon, who was Secretary of the Ministry of States in the Government of India for many years, wrote this book in 1956; in it the area of Kutch is described as 8,461 square miles. This confirms the area given in the White Paper on Indian States (Pak. Book 37), eight years later.

India says that the book shows how all the Indian States were persuaded to accede to and merge with India. The area given should be read in the context – as the area given in several other documents regarding education and police only; the inhabited portion is referred to. Mr. Menon was more concerned with the machinery and negotiations whereby the various States were brought in; he was not really concerned with the description of the Rann; he was concerned with saying that here is a State with a population of so much and revenue of so much over an area of so much and that has merged. There is a map annexed where the whole of the Rann is marked in yellow. Any reliance placed on the description of the area is offset by the map. At the time of writing the book, Mr. Menon had retired from the Government service and his book is not an official one. Even the figure which he gave is a mistaken one. It is neither the area of the mainland of Kutch nor the area of Kutch inclusive of the whole Rann or a part of the Rann. Mr. Menon was dealing not with Kutch alone but generally with all the Indian States.

Pakistan contends that the book is not put forward as an official Government statement; it is the statement of a man who was the Secretary of the relevant Department at the time when the integration of the States took place in India. By leaving Government service, he did not divorce himself from all knowledge and information he had acquired.

8. *The Northern Edge of the Rann as the Limit of Sind*

(*a*) to (*d*) Letter from Mountstuart Elphinstone, Governor of Bombay, to the Amirs of Sind, 1820 (Ind. Doc. A-90).

Letter from the Government of Bombay to the Resident, Baroda, 1820 (Ind. Doc. A-91).

Letter from Captain J. MacMurdo, Resident, Kutch, to the Amirs of Sind, together with his letter to the Native Agent at Hyderabad 1820 (Ind. Doc. A-92).

Letter from Mountstuart Elphinstone, Governor of Bombay, to the Amirs of Sind, 1820 (Ind. Doc. A-93):

In the first decade of the nineteenth century, Khosa bandits committed depredations and plundered in the territories of Kutch, Kathiawar, Palanpur, Radhanpur, etc. The British Government were repeatedly urged by the Amirs of Sind to control these bandits, as they came from Parkar, but the Amirs of Sind could not extirpate them and their depradations into the aforesaid territories continued unabated. After the British entered into the Treaty with Kutch in 1819, they proposed to employ a force for the purpose of punishing the bandits as, India submits, the British felt it their duty to protect their subjects and those of their allies against the depredations of the Khosas. Accordingly, Mountstuart Elphinstone, Governor of Bombay, addressed a letter to the Amirs of Sind intimating the proposal to employ the force and asking for their approval of the measure. In order to assure the Amirs that the contemplated force was intended merely to combat the bandits and not to invade Sind, the Governor of Bombay, in his letter in India Document A-90, stated:

> "It is not the intention of the British Government to occupy any part of the territory to which the Khosas resort, nor on any consideration to extend its connexions beyond

the Rann and the Commanding Officer will receive the most positive injunctions on no account to enter the Sind territories."

In giving instructions concerning the plan to the Resident at Baroda, the Government of Bombay in its letter (Ind. Doc. A-91), observed:

"The Hon'ble the Governor-in-Council considers it to be necessary that our policy should be limited to the removal of the Khosas to a distance from our frontier without attempting to occupy the territory they resort or to extend our connexions beyond the Rann...".

Captain MacMurdo, Resident at Kutch, also wrote to the Amirs of Sind the letter in Indian Document A-92 in which he assured the Amirs that the British Government, in entering the Thar Parkar District to punish the Khosas, had "no design of extending its frontier beyond the natural limits of the Rann".

Some months later, Mountstuart Elphinstone, Governor of Bombay, wrote another letter to the Amirs of Sind (Ind. Doc. A-93), in which he observed:

"The British Government entertained no wish whatever of extending its connexions beyond the Runn and sought only the establishment of such a state of things on our frontier as would secure the countries of our allies from the irruptions of the banditti...".

India relies upon the statements in these letters that the British Government had no intention of extending its connections beyond the Rann and contends that the territory of the Amirs of Sind ended at the northern edge of the Rann and that the Rann was not treated as a part of Sind. These letters show that the British considered themselves under an obligation to protect not only their own territories but those of their allies, meaning thereby Kutch and the other neighbouring Indian States. They were responsible, by reason of the Treaty, for maintaining the integrity of the territories of Kutch.

Pakistan points out that the force which was proposed to be employed was to be in conjunction with Radhanpur and Jodhpur, and Kutch was not included; Kutch was not to send even a soldier and this position cannot be reconciled with the claim that the Rann was Kutch territory. It could be reconciled with the concept that the Rann is a barrier. The words "beyond the Rann" mean beyond Palanpur. Indian Document A-90 says that after the expedition was completed, the force would retire "within the Cutch or Kattyawar frontier"; the use of the words "Cutch frontier" or "Kattyawar frontier" are used in opposition to the Rann; the force is carrying out operations across the Rann with a base at Palanpur. Indian Document A-91 says "as our policy should be limited to the removal of Khosas to a distance from our frontier..."; "our frontier", that is Kutch, is something in the Governor's mind which is at some distance from the place where he would like the Khosas to be; he wants to keep the Khosas at a distance from his frontier without attempting to occupy the territory to which they resort. In other words, his concept is that there is a barrier between them and him. In fact, he goes to the extent of considering "the Rann as the barrier between us and Sind" (Ind. Doc. A-91). Indian Document A-92 describes the natural limits of the Rann as bounding Kutch and Gujarat, meaning thereby that the Rann is a natural barrier. Otherwise, it brings out exactly the same concept as the earlier two letters. In Indian Document A-93, the words "our frontier" are used a number of times. The Rann is next to our frontier – the frontier of Kutch, Kathiawar, Palanpur on this side of the Rann.

India replies that the absence of Kutch in the employment of the force is of no moment for the reason that Kutch is expressly stated to be one of those allies whose territories are to be saved from the depredations of the banditti; it does not matter who fought. The plan of the expedition was that the British troops would pursue the banditti "until they shall be driven across the desert", i.e., to the other side of the desert of Thar Parkar; a part of the force might remain in this situation for a time for the purpose of immediately marching against any Khosas who might attempt to return; as soon as there might be reason to be satisifed that they are sufficiently deterred from attempting any settlement, "they will retire within the Cutch or Kattyawar frontier". After driving out the Khosas to the north, "the force will be withdrawn to the neighbourhood of the Rann", which must mean that neighbourhood of the Rann on the northern side, so that they could march against the Khosas if they attempted to return. As soon as the troops were satisfied that the Khosas would not return they were expected to retire to the "Cutch or Kattyawar frontier", i.e., the firm land which is within Kutch or Kathiawar where alone the army could retire. The letters indicate that the British were entitled to cross the Rann – because it was not the territory of Sind; beyond that they did not want to do anything except what was strictly necessary for the limited purpose contemplated. To construe the word "barrier" as meaning a dividing entity between States on either side is stretching it beyond what was intended in the context: What the British said was that it was difficult to put themselves on the other side of the Rann, and they decided to treat the Rann as a sufficient barrier once the Khosas had been driven away. Because of the nature of the Rann, communications would be too long, the further the British moved away from the mainland, the more difficult their position became, and hence the Rann was to be treated as a physical impediment. By speaking of the "frontier beyond the natural limits of the Runn which bounds Gujarat and Cutch", it was intended to convey that the British did not wish to extend their frontier beyond the natural limits of the Rann – the frontier being the other side of the Rann; the Rann bounding Kutch and Gujarat was merely a description. The substance of the letters is that the Rann was not at that time the property of, or under the sovereignty of, the Amirs.

Pakistan states that the words "they will retire within the Cutch or Kattyawar frontier", appearing in Indian Document A-90, cannot be interpreted to mean anything other than what they directly say – the Rann itself is the boundary; there are two edges of it, one side is the Thar Parkar, and the other is the Kutch and Kathiawar side. The force will remain on the Thar Parkar side until certain events happen; when those events have been satisfactorily dealt with, then it will come to the Kutch side. The Rann, the broad belt, is the boundary. Indian Document A-91 refers to the Rann being considered as a barrier between "us and Sind"; to say that it is the edge of the Rann which is being treated here as the boundary would strain the language completely and artificially. The barrier is the width of the Rann. Indian Document A-92 refers to "the natural limits of the Rann which bounds Guzerat and Cutch".

(*e*) Hamilton, *The East India Gazetteer*, Vol II, 1828 (Ind. Doc. C-36):

This Gazetteer describes the general boundaries of Sind and states that Kutch and the sea are to the south of Sind while the sandy desert and Kutch are to its

east (p. 556). India says that the description is a broad and not a minute one. When it speaks of the sandy desert, that is Thar Parkar, and Kutch on the east, it must mean that the Rann is a part of Kutch. Pakistan points out that the Gazetteer also says that "the eastern limits of Sind are particularly ill defined but the late Captain MacMurdo was of the opinion that they ought to be fixed by the channel of the Pooran or ancient Indus" (*op. cit.*, p 556). It is more or less saying that the eastern limits are ill defined, but MacMurdo's opinion is perhaps a good opinion to follow. The sandy desert to the east is the desert as conceived by MacMurdo, which includes the Rann. There is a map attached to the Gazetteer which shows the Rann as a separating entity.

(*f*) Letter from the Government of Bombay to the Resident in Kutch, together with extracts from a Despatch from the Court of Directors, 1834 (Ind. Doc. A-94):

The Khosa banditti could not be controlled, and ultimately the British Government decided to establish a military post in Parkar. With reference to this idea, the Court of Directors observed in their Despatch:

> "Hereafter we observe it is your intention to restrain the predatory population of Parkur by maintaining a Military Post in the country itself; not as heretofore, by stationing small parties along the frontier."

According to India, reference to the frontier is to the northern edge of the Rann but Pakistan says that they were stationing small parties along the Palanpur coast and that was the frontier. India replies that the British had originally stationed small pickets in Thar Parkar but then they decided to establish a permanent post.

(*g*) Thornton, *Gazetteer of the Territories under the Government of the East India Company and Native States on the Continent of India*, Vol. IV, 1854 (Ind. Doc. C-40):

This Gazetteer describes Sind as situated between 23° 37′ and 28° 32′ of north latitude with Kutch lying to its south (pp. 490–1). Volume II of the same Gazetteer (Ind. Doc. C-23), describes the limits of Kutch as extending from 22° 47′ to 24° 40′ of north latitude (pp. 44–5). India says that the descriptions of Sind and Kutch, read together, indicate that no portion of the Rann was within Sind and hence the southern limit of Sind lay along the northern edge of the Rann. Pakistan says that it is really the description of Kutch which includes the Rann that is of relevance; otherwise the description of Sind as given would not exclude the Rann necessarily as it describes the lower latitude as 23° 37′. The comments of Pakistan on the description of Kutch appear in Section 7 above. India answers by saying that while the area of Kutch is given as exclusive of the Rann, the area of Sind is not so given and thus no part of the Rann is included in Sind.

(*h*) Raikes, *Memoir on the Thar and Parkar District of Sind* (Pak. Book 24):

Raikes says in this Memoir that the portion of the Thar under his charge "is a strip, as it were, running along the northern border of the Great Rann of Kutch" (p. 2). According to India, this establishes that Raikes, who was the District Magistrate of Thar Parkar, regarded the northern border of the Rann of Kutch as the boundary of Thar Parkar. This matter is further discussed in Section 7 above.

(*i*) Bombay Administration Report for 1882–83 (Ind. Doc. C-41):

This report mentions that the District of Hyderabad in Sind lies between 24° 13′ and 26° 15′ of north latitude (p. 65). The District of Thar Parkar is described as lying between 24° 13′ and 26° 15′ of north latitude and between 68° 51′ and 71° 8′ of east longitude (p. 66). Thus, says India, the Districts of Hyderabad and Thar Parkar did not extend below 24° 13′ of north latitude, and the District of Thar Parkar did not extend beyond 71° 8′ east longitude.

(*j*) and (*k*) *Gazetteers of the Province of Sind* – "B" – Vol. VI – Thar and Parkar District, 1919 and 1926 (Ind. Docs. C-43 and C-44):

These Gazetteers describe the Thar Parkar Districts as lying between 24° 13′ and 26° 21′ of north latitude and between 68° 40′ and 71° 11′ of east longitude (p. 1). India says that the district thus did not extend below 24° 13′ of north latitude and beyond 72° 11′ of east longitude, which excludes the Rann from Sind.

These Gazetteers describe Diplo Taluka as lying between 24° 16′ and 24° 51′ of north latitude, Mithi Taluka as lying between 24° 16′ and 24° 58′ and Nagar Parkar Taluka as lying between 24° 12′ and 25° 02′ of north latitude (pp. 31 and 23, respectively). These taluka descriptions, according to India, also confirm that no part of the Rann was included in Sind.

(*l*) *Gazetteer of the Province of Sind* – "B" – Vol. II – Hyderabad District, 1920 (Ind. Doc. C-42):

The Hyderabad District is described in this Gazetteer as situated between 24° 12′ and 26° 18′ of north latitude (p. 1) and Badin Taluka of that district is said to be lying between 24° 13′ and 24° 58′ of north latitude. India contends that the Hyderabad District thus did not include any part of the Rann.

(*m*) *The Imperial Gazetteer of India,* Provincial Series, Bombay Presidency, Vol. II, 1909 (Ind. Doc. C-29):

This Gazetteer gives the relevant co-ordinates of the southern districts and talukas of Sind, which have a bearing on the limits of Sind, as follows:

Karachi District 66° 42′ and 68° 48′ of north latitude (p. 237).

Hyderabad District 24° 13′ and 27° 14′ of north latitude (p. 219).

Thar Parkar District 24° 13′ and 26° 15′ of north latitude (p. 298).

Jati Taluka 68° 1′ and 68° 48′ of east longitude (p. 250).

Badin Taluka 24° 13′ and 24° 58′ of north latitude (p. 229).

Diplo Taluka 24° 16′ and 24° 51′ of north latitude (p. 311).

Mithi Taluka 24° 17′ and 24° 57′ of north latitude (p. 310).

Nagar Parkar Taluka 24° 14′ and 25° 02′ of north latitude (p. 311).

India points out that although the limits of the Sind districts and talukas are defined, nothing is said about any portion of the Rann as belonging to Sind. If Kutch is defined as having a portion of the Rann or as extending to the 24th parallel, a curious result follows: Sind is limited without any portion of the Rann, Kutch is limited with a portion of the Rann and the remaining portion of the Rann is left undetermined.

On the other hand, Pakistan states that Sind and Kutch are two of the States

abutting on the shores of the Rann, and that the Rann, being a marine feature, is described and depicted as separating coastal territories. The case of Pakistan is that the nature of the Rann being other than land, the Rann is not shown as included in the land of either State.

(*n*) Military Report of the Sind Independent Brigade Area, General Staff India, 1928 (Ind. Doc. TC 77):

India relies on a Military Report on the Sind Independent Brigade Area of 1928 which defines this area in the following terms: "The Sind Independent Brigade Area consists of the Province of Sind". A map accompanying this Report is exhibited by India as Indian Map TB-24. The report is relied upon by India to show that the boundary of Sind claimed by India is the boundary recognised for all purposes of the Government of India, including military purposes. While in India's submission the hand-drawn coloured riband along the boundary of Sind on Indian Map TB-24 is not absolutely accurate, the map indicates that the boundary of Kutch and the boundary of Sind are conterminous and lie along the northern edge of the Rann. Pakistan relies upon another passage in the Report which states that Sind was bounded on the south by the Rann. Pakistan also relies on the map which, in Pakistan's submission, does not separate Sind from the State of Kutch. It may be noted that the words "Bombay District" are written over the Rann as well as over Kutch on Indian Map TB-24.

India also points out that Sind is never spoken of as having any part of the Rann in any phrase of any kind which is used in relation to Kutch – neither "including the Rann", "exclusive of the Rann", "exclusive of a portion of the Rann", "independent of the Rann" or "its Rann". India states that even the Statistical Abstracts submitted to the British Parliament mention "exclusive of the Rann" in describing the area of Kutch, but no such reservation is made in describing the area of Sind (see Section 7).

9. *Sind and Kutch Conterminous along the Northern Edge of the Rann*

It is common ground that Sind and Kutch were conterminous. Pakistan, however, contends that the Rann is a dividing entity and the conterminous boundary lies roughly along the 24th parallel. The evidence in this connection, relevant to this Chapter, has been discussed in Sections 2, 3, 5 and 6 *supra*. India's case is that the conterminous boundary between Sind and Kutch lay along the northern edge of the Rann and India, in support of this case, says that the entire Rann belonged to Kutch and that the limit of Sind ended at the northern edge of the Rann. These matters are discussed in Sections 7 and 8. India further relies upon some other evidence which is said to indicate expressly that the conterminous boundary between Sind and Kutch lay along the northern edge of the Rann. This evidence is set out below. The evidence regarding the "vertical line", which India says is the conterminous boundary between Sind and Kutch in the west, is discussed in Chapter VIII, Section 3.

(*a*) "Report on the Eastern Narra etc." by Lieut. J. G. Fife, Engineers, on Special Duty, 1852 (Ind. Doc. C-100):

The Rao of Kutch was anxious to have the Khori River restored to its old channel by removing embankments built by the early Sindian rulers. In 1843

the Government of India passed a Resolution directing a survey of the region to be made (Ind. Doc. A-25). Captain Baker, Superintendent of Canals in Sind, was appointed to be the surveyor. He made two Reports (Pak. Doc. B.271 and Ind. Doc. C-103). Later, Lieut. Fife was asked by the British Government to consider further the question of the re-opening of the Eastern Branch of the Indus. He observed in his Report:

> "As far as Roma-ka-Bazar, in the vicinity of which the British territory terminates, there is a good deal of culturable land but below that place, within the possessions of the Rao of Cutch, the soil is said to be much impregnated with salt and very unfavourable."

India says that this statement shows that the British territory, i.e., the territory of Sind, extended up to Rahim ki Bazar only and below that place lay the Rann which is described by Fife as the possession of the Rao of Kutch. Pakistan states that the term "vicinity" is not very definitive and one does not know how far the "vicinity" extends; it depends upon what scale a person has in mind. The "vicinity" may extend even to several hundred miles if one is thinking of it on a very large scale. Thus, one does not really know what exactly was the concept of Fife. Apart from that, Fife has not said that every inch below Rahim ki Bazar is within the possession of the Rao. The "vicinity" must extend somewhere, and somewhere "below", it need not be immediately after that. Between the concept of British territory terminating and the territory in the possession of the Rao, there may be something which is neither the concept of British territory nor in the possession of the Rao: this position is not excluded from the statement of Fife. Fife says "the soil is said to be much impregnated with salt". He has not been there himself; he has only gone as far as Rahim ki Bazar and beyond that what he has stated is from information as can be gathered from the words "it is said". Furthermore, the scheme referred to by him was to open the Eastern Branch of the Indus higher up, even above Hyderabad, called the Nara Project. The object was to irrigate as much of Sind as possible by this project. If this project were to be carrried out, it was possible to benefit Khairpur State and, at the tail end, it might have benefited Kutch and therefore Kutch was greatly interested in the project. Hence, incidentally, the question whether some benefit could be bestowed on Khairpur and Kutch was also being examined. Fife commenced exploration from the north and since he had put in a negative report as to the benefits the project would bestow on Kutch, he moved up to Rahim ki Bazar and did not consider it necessary to explore further down. When he says that the British territory terminates at Rahim ki Bazar, his concept of British territory is the territory in which the British are interested for the purposes of increasing the revenue, he knew that beyond Rahim ki Bazar there was no village of Sind as it was the Rann. However, instead of using accurate, constitutional terminology, he used the phrase "the British territory terminates". India replies that the word "vicinity" implies a certain nearness. It is true that the term is not very definitive and its full meaning depends upon the scale. But Fife was not thinking on a large scale. He was investigating the place for the purpose of irrigation and he says that the border is in the vicinity of the Rahim ki Bazar; he is thinking of a place and on this scale, obviously "vicinity" means something very near or comparatively near. The width of the Rann is on the average about 48 miles and he could not be thinking of the middle of the Rann

as being in the vicinity of the Rahim ki Bazar; what he meant was that the border is very near Rahim ki Bazar. In the context, the word signifies, as it ordinarily means – "in the neighbourhood". Reading the whole of the Report, there is no question that what Fife meant was what one ordinarily conceives of – in the immediate neighbourhood. When he says "below that place within the possessions of the Rao of Kutch", he means that beyond that place are the possessions of the Rao. Assuming that he did not actually get down to the edge of the Rann, it was his business to find out what lay beyond Rahim ki Bazar as he was discussing irrigation and he was in a place where he could get all the information. The fact that he was an engineer need not necessarily derogate from his observation. Fife was continuing Baker's Reports and was commenting upon them; Baker was certainly interested in Kutch and it would be wrong to limit Fife's interest to Sind only and imply that he had no further interest beyond his province.

Pakistan reiterates that one cannot fix how far below and within what vicinity of Rahim ki Bazar the British territory ends and the Kutch territory begins. It is true that if one goes below Rahim ki Bazar, one goes to a place where the Rao's territory begins; but whether it is 10 miles below or 12 miles below is not known; Fife has not been there and there is nobody there who would tell him or speak out where the territory of the Rao begins.

(*b*) *Post-War Development Schemes, 1945* (Ind. Doc. TC 48):

This is a book published by the Government of Sind in 1945. It contains the Sind Government's first draft post-war plans, embodying the individual schemes prepared by respective heads of Departments. India points out that the book mentions that the Sind Government decided on the priority of certain plans and appointed a Sind Provincial Development Board, which consisted of the Premier of Sind as Chairman, all Ministers as *ex-officio* members and several high officials and non-officials as members. The Report of the Committee made provision for the plantation of forest strips in the Thar Parkar District. One of the strips was described as a "strip along the Sind–Kutch border from Rahim-ki-Bazar via Adhegam to Berano" (*op. cit.*, p. 175). India contends that this indicates the Sind–Kutch border lay along the northern edge of the Rann According to India, a very high-powered Board thought that this was the Sind–Kutch border.

Pakistan points out passages in the book which say that the individual schemes in it were prepared by the respective Heads of Departments, and that many of the schemes are yet to be examined and approved by the Government and argues that the plan therefore indicates only the lines on which it was proposed to plan for the post-war period and that, as it was a compilation of schemes prepared in the various departments, extensive alterations would have been necessary later on. It is contended that the Board had yet to approve or examine the schemes and the book does not contain any section indicating what the Board decided. Whether the schemes were ever seen by the Board or not, even that is not clear. The scheme relied upon by India is a recommendation of a former Conservator of Forests in Sind. It is not even the scheme of the Government Conservator of Forests. Pakistan draws attention to another scheme dealing with roads. There is an entry to the effect that with the scheme for roads

as envisaged, no place within Sind proper, excluding the Kohistan Desert and the Rann area, would be more than about two miles from a road. Whoever was drafting the scheme of roads was conscious that Sind contained some areas of the Rann.

(*c*) Memorandum from the Resident in Baroda and for the States of Western India and Gujarat to the Chairman, Central Waterways Irrigation and Navigation Commission, New Delhi, 1946 (Ind. Doc. A-63):

Letter from C. G. Hawes, to the Maharao of Kutch, 1944 (Ind. Doc. A-64), and

Notes recorded by Mohsin Ali, Irrigation Member, CWINC, May 1947 (Ind. Doc. A-65):

These documents relate to the idea of the Rao of Kutch to irrigate the Banni by a canal from the Indus. India's case is as follows: In 1943, the Rao of Kutch requested the Government of India to suggest the name of a suitable engineer to advise the State on their several irrigation projects and C. G. Hawes, Chief Engineer and Secretary to the Government of Sind in the Public Works Department, was recommended by the Government of India. The Rao thereupon requested Hawes to examine the feasibility of the scheme of bringing the Indus waters to Kutch. The Report of Hawes made in 1943 is an annexure to Indian Document A-63. He stated that the scheme would be feasible provided the Rao could cultivate "land on the north side of the Runn next to the Sind border"; he also presented an alternative scheme, which he recommended for consideration. This alternative scheme required the building of a barrage on the Indus in the vicinity of Jherruck by Sind. He stated that "this barrage is situated about 75 miles from the nearest point in Kutch territory", from where the canal had to be provided up to Luna in the Banni or to commence irrigation at mile 75 along the border of the Rann, if the soil of the Rann at mile 75 was found suitable for rice, the area of command thereby being about 100,000 acres. He suggested finally the levelling of the line of the canal from mile 75 to Luna and investigation into the possibilities of using the water on the Banni lands, an investigation into the suitability of soil in an area of 100,000 acres of the Rann immediately south of mile 75, and observation of conditions of the Rann during the monsoon. Along with his Report, Hawes submitted a sketch (Ind. Map B-55). India relies upon the statements of Hawes that the nearest point in Kutch territory is 75 miles from Jherruck and that the alternative scheme provided for rice cultivation of 100,000 acres in the Rann below mile 75 and contends that Hawes, the Chief Engineer of Sind and a Secretary to the Government of Sind, regarded the Sind boundary ending at, and the Kutch boundary commencing at mile 75 from Jherruck, i.e., at the northern edge of the Rann.

In the following year he wrote the letter at Indian Document A-64 to the Rao in which he further discussed the alternative scheme proposed by him. He stated in this letter:

> "If you feel that your lands on the north side of the Rann are suitable for growing rice and if you also consider that the financing of the scheme is feasible, I would suggest that you should write through the Political Dept. to the Sind Govt....".

This statement also is relied upon by India to show that the area in the northern part of the Rann belonged to Kutch.

The Report of Hawes was forwarded, at the instance of the Dewan of Kutch, by the Resident to the Central Waterways Irrigation and Navigation Commission of the Government of India for their opinion (Ind. Doc. A-63). Mr. Mohsin Ali, of that organisation, visited Kutch and the area in question and concluded, *inter alia*, as follows:

> "It would be quite feasible to irrigate the culturable land adjoining the Sind boundary on the north of the Runn by canals taking off from the projected Lower Sind Barrage" (para. 5 (*a*) of Ind. Doc. A-65).

After discussions with the Chairman of the organisation, he also recorded a note as follows:

> "It is our considered opinion that Cutch should be given its due share of the Indian waters for the irrigation of its lands on the northern shore of the Great Runn, and lying in Indus basin, *vide* my remarks in Paragraph 5 (a) above."

India says that Hawes, a secretary to the Government of Sind and Chief Engineer of Sind, and also the Commissioner, which is a responsible body, all acquiesced and adopted the position that Kutch began at the 75th mile from the headworks of Jherruck Barrage, that is, at Deh Babrao, and that was the boundary between Sind and Kutch. Hawes would never have made an elaborate scheme of the kind he made with all the calculations based on that being the end of the Sind territory had he not been convinced of the fact.

Pakistan's explanation is that the Report of Hawes as well as the noting in the Commission proceeded on the assumption that the purple line in Indian Map B-44 was the boundary between Sind and Kutch. Even if these people were misled into thinking so, it is immaterial.

10. *Sind and Kutch Conterminous in the Western Sector*

Pakistan states that Khori River was the traditional boundary between Sind and Kutch. In Pakistan's view, important consequences follow from this fact. Khori River being the boundary means that Sind lay to the west of the river, and Kutch to its east. As stated elsewhere, in Pakistan's submission the Kutch territory to the east of Khori River consisted of a narrow strip of land called "Sayra". To the east of this strip lay the Rann proper. On the other hand, the area to the west of Khori River was part of the mainland of Sind. This is the area referred to by Pakistan as the "delta lands in dispute".

India says that it is difficult to know exactly where the course of the Khori River was; it dried up before 1819; no-one can be precise and sure as to how the river flowed till it joined the sea. The vertical line was the boundary of Sind as shown by the maps, the historical records and the authoritative documents exhibited by India. The first official survey of Sind (Macdonald's Survey) took place from 1855 to 1870; it shows the vertical line which was demarcated on the ground, and accepted by the Sind authorities as well as by the Government of India.

Pakistan contends that if Sind extended up to Khori River, it also follows that the so-called vertical line could not have been the Sind–Kutch boundary. Apart from an entry stated to have been made by Loftie during Macdonald's Survey (Ind. Doc. TA 74), the reliability of which is contested by Pakistan (see Chapter V), the end of the line is not described in any document until that time

(in fact, the vertical line is not even mentioned) as a trijunction between the two talukas of Sind and a taluka of Kutch State. The first published map to show the vertical line, as well as the so-called "loops" at its top, is Indian Map B-2 published in 1872. The vertical line was supposed to have been a discovery of Macdonald's. Pakistan argues, however, that the maps prepared by Macdonald do not show the Sind boundary and in any event not the Sind–Kutch boundary. According to Pakistan, until 1867 or 1872, there was no trace whatever of the vertical line and the evidence of this period is unanimous in describing and depicting Khori River as the Sind–Kutch boundary.

India states that the vertical line from the Khori Creek to the trijunction always existed. Macdonald found pillars on this line when he surveyed it. It is inconceivable that someone should have drawn an arbitrary line and that for years and years this should have been accepted without question. Erskine confirmed the vertical line in his Survey of 1904–05. The line has never been considered to be arbitrary. It has been checked, cross-checked, double-checked and re-checked. In fact, Lucas, the Commissioner in Sind, stated in 1910 that this line had existed since 1837. There is no reason to disbelieve Lucas. He must have looked at the authorities in coming to this conclusion, even if the records that he consulted are not before the Tribunal. In 1914, this line was accepted as the Sind–Kutch border after due consideration of the evidence of Sind and Kutch by the Government of Bombay and the Government of India. If this vertical line was not the boundary at all and there were delta lands to the east of this vertical line which were a part of Sind, one would surely have expected the Sind authorities to deny that Kutch could claim something to the west of that line. The decision was reached after six years of discussion and no-one suggested that this vertical line was not the boundary. Pillars were also fixed along this line in 1924 jointly by Sind and Kutch as the Sind–Kutch boundary.

Pakistan argues, on the other hand, that Lucas had been under a clear misapprehension in his assertion that the authorities summarised in a statement prepared by a previous Commissioner in Sind, Morison, in 1905 constituted a mass of evidence to the effect that, since 1837, the Sind–Kutch boundary had been recognised and shown on all maps to be the vertical line. In fact, there is no map dating from before about 1870 which shows the vertical line as the boundary of anything. Pakistan also produced the statement of authorities prepared by Morison, to which Lucas had referred, in order to show that none of those authorities support the assertion that this line had existed since 1837. The 1837 entry in that statement is a passage from Lieut. Carless that Khori River was the Sind–Kutch boundary. Lucas was factually wrong in stating that those authorities established the vertical line to be the boundary, whereas in reality those authorities constituted evidence that Khori River was the boundary.

Pakistan relies on the following authorities in support of its contention that Khori River was the traditional Sind–Kutch boundary:

(*a*) Rennell, *Memoir of a Map of Hindoostan or the Mogul Empire, 1792* (Pak. Book 107).

"Cutch, is a territory of considerable extent, situated on the south-east of Sindy; the eastern branch of the Indus separating the two countries . . .". (p. 185.)

(*b*) Hamilton, *The East India Gazetteer, 1815* (Pak. Book 28).

"CUTCH ... To the north it is bounded by a sandy desert ...; to the east it has Gujrat, and to the west Tatta, from which it is separated by the most eastern branch of the Indus ...". (p. 322.)

(*c*) Treaty of 1816 between the East India Company and the Rao of Kutch (Pak. Doc. A.2).

Article 7 of the Treaty describes Lakhpat "on the borders of Sindh", confirming Khori River as the boundary.

(*d*) MacMurdo, *An Account of the Province of Cutch and of the countries lying between Guzerat and the River Indus, 1820* (Pak. Book 18).

"... The boundaries of Cutch are defined by nature in a more decided manner than those of almost any other country ... On the west is the easternmost branch of the Indus ...". (p. 205.)

(*e*) Williams, *A Topographical Memoir on Parts of the Western Frontier of India from information collected in the years 1800–10,* 1820 (Ind. Doc. A-11).

"The whole tract [Kutch] may not improperly be denominated an island ... the eastern branch of Indus separates it from Sind." (p. 273.)

(*f*) Hamilton, *The East India Gazetteer, 1828* (Ind. Doc. C-36).

"But the great earthquake of Cutch caused a revolution in the eastern and almost deserted channel of the river Indus, which bounds Cutch to the westward ...". (pp. 14–15.)

(*g*) J. Burnes, *A Narrative of a Visit to the Court of Sinde, 1831* (Ind. Doc. C-2).

"The province of Kutch has ... the Khori River, or eastern branch of the Indus to the west." (p. 243.)

(*h*) A. Burnes, *Travels into Bokhara, 1834* (Pak. Book 29).

"I journeyed from Bhooj, the capital of Cutch, to Lucput, a town on the north-western extremity of the province, situated on the Korea, or eastern branch of the Indus." (p. 315.)

(*i*) Grant, *Memoir to illustrate a Geological Map of Cutch, 1837* (Ind. Doc. C-15).

"The province of Cutch ... is bounded ... to the N.W. by the eastern branch of the Indus and the territory of Sinde." (p. 83.)

(*j*) Carless, *Memoir on the Delta of the Indus, 1837* (Pak. Book 48).

"The Koree, which separates Sind from Kutch, once formed the lower part of the Fullailee ...". (p. 496.)

"... Lukput was built about thirty-five years ago by Jemedar Futteh Mahomed ... to defend the frontier of the Kingdom agaist the encroachments of the Sindians". (pp. 499–500.)

(*k*) Letter from the Commissioner in Sind to the Political Agent, Kutch, 1853. (Pak. Doc. B.296.)

Frere, the Commissioner in Sind, writing to the Political Agent, Kutch, stated:

"I have the honour to inform you for communication to H.H. the Rao that the Customs levied on the Sind frontier near Lukput ...". (p. 1.)

(*l*) Raikes, *Memoir on the Cutch State, 1854* (Ind. Doc. C-3).

"The Province of Kutch ... is bounded ... on the north-west by the eastern branch of the Indus ...". (p. 1.)

(*m*) Wynne and Fedder, *Memoir on the Geology of Kutch, 1872* (Pak. Book 20).

"Formerly a considerable arm of the River Indus called the Koree traversing the delta found its way to the sea at the eastern [*sic.* should be "western"] extremity of Kutch."

(*n*) Raverty, *The Mihran of Sind and its Tributaries, 1892* (Pak. Book 23).

"This branch ... reached the ocean by one mouth, known as the Khorai – the 'kori' of the maps and Gazetteers – separating Sind from Kachchh." (p. 459.)

(*o*) Haig, *The Indus Delta Country, 1894* (Pak. Book 15).

"The Delta tract ... is bounded on the east by the sandhills of the desert, by the farthest eastern channel of the Indus, known as the Puran, which has long ceased to carry water except in times of unusually high floods and by the Kori Mouth or Creek, which separates the Delta from Kachchha ...". (pp. 1–2.)

In support of the contention that the vertical line has been the boundary between Sind and Kutch, India relies on documents and arguments summarised in Chapters V and VIII.

11. A: *The Boundary of Kutch as Passing through Particular Places*

B: *The Boundary of Sind as Passing through Particular Places*

In response to a request of the Tribunal, India and Pakistan have submitted India Tabular Statement No. 17 and Pakistan Chart 33, respectively, listing statements relied upon by them in which the boundary of Sind or Kutch has been described as passing through a particular place or area. These lists contain both cartographical and non-cartographical evidence, all of which is discussed in detail elsewhere. Hence it suffices merely to mention the particulars of the non-cartographical evidence relied upon by each Party. The evidence of India consists of Pakistan Document B.221, Indian Documents A-35, A-36 and A-66, the various documents relating to Chhad Bet, documents relating to the Nara Bet chain (including Ind. Docs. A-87, A-89 and TA 22), Indian Documents AA-9, AA-10, A-33, A-32, A-34, AA-11, TA 16, TA 17, TA 18, A-63, A-64, A-65, C-100, A-14, TC 40, and Pakistan Document B.23. The evidence of Pakistan consists of Pakistan Documents A.2, B.4, B.6, B.32, B.125, B.54, B.19, B.330 and B.105, Pakistan File 3 (*a*) and Indian Documents A-70 and A-88.

Pakistan introduced at the time of its second oral argument Pakistan Documents B.359 to B.377 (the correspondence of 1884), concerning an enquiry regarding the location of the boundary between the Hyderabad Collectorate and Kutch State.

Pakistan states: There are certain Government orders which required that officers in charge of areas which adjoin Indian States should inspect the boundaries between their areas and the Indian States. It is in that connection that the Assistant Collector of Tanda Mohammad Khan reported in 1884 to the Collector of Hyderabad that "despite every effort I have not been able to ascertain the exact locality where the boundary line between this Division and Kutch territory was laid down. All I can find out is that it is somewhere in the Rann". The

Collector passed on this Report to the Commissioner in Sind who replied that "[f]rom the map of Hyderabad district it appears that the Rann of Kutch is southern boundary of Hyderabad District". The Assistant Collector evidently still thought in terms of a widthless line marking a boundary and,"being at loss to know where to search for such marks", again proposed to the Collector that "the Superintendent of the Trigonometrical Survey should be addressed with a view to eliciting information respecting the position of the boundary line between Kutch Territory and this Collectorate". The Collector accordingly addressed a letter to the Superintendent of the Trigonometrical Survey of India, Hyderabad, on 24 April 1884 asking him "to inform me of the exact position of the boundary line between the Hyderabad District and the State of Kutch, as I am unable to find it on the ground or on any map in my possession". The Surveyor eventually replied that Tanda "does touch on the Rann of Kutch". The exact line is still not mentioned. The Collector then reported (Pak. Doc. B.369) to the Commissioner (Erskine) that "from the tracings forwarded, it will be observed that there are no boundary marks, but that the Rann itself is the boundary". In reply the Commissioner remarked that "there is no demarcated boundary laid down between the Tando Sub-Division and Cutch".

In addition to what is evident from the correspondence itself, Pakistan also points out that the Indian contention that the trijunction in the area is known to be the trijunction between Kutch and Sind is disproved by this correspondence because neither the Assistant Collector, nor the Collector nor the Commissioner in Sind considered that to be so.

India maintains that the general purport of this correspondence is really that the Rann is the boundary of this particular division. It does not carry the matter any further than that. There are no marks but the Rann is the natural boundary, the boundary between Sind and Kutch. There is ample implication in some of those documents of the fact that the two were conterminous.

Pakistan maintains that, according to the evidence, the southern limits of Sind extended up to Lakhpat and Khori River formed the limit of the land of Sind along the western limit of the Rann. In the Rann proper, the District of Thar Parkar included Kerdahi, Biria, Bawarla, Beria Bet, and the district boundary of Thar Parkar was said to extend the Sosal and Salia Chauki Bets. A point half a mile to the north of the Dharamsala on Gainda Bet was traditionally regarded as lying on the Sind–Kutch boundary. Pakistan further contends that after Independence Karim Shahi was admitted by India to be near the Indo-Pakistan *de facto* border.

India maintains that, according to the evidence, the northern limit of Kutch, starting from the eastern trijunction at the point 24° 41′ 25″ of north latitude and 71° 05′ 43″ of east longitude, is along the northern edge of the Rann up to the western trijunction at Kirria, then along the vertical line southwards, thereafter along the blue dotted line shown in Indian Map B-44 and finally along the middle of the Sir Creek till it joins the Arabian Sea. The two "loops" and all islands in the Rann, including Dhara Banni and Chhad Bet, form part of Kutch. The alignment of the Sind–Kutch boundary and the places on the boundary are shown in the Map "A".

12. *Miscellaneous*

(*a*) The Rao of Kutch was anxious to restore the flow of the Puran River and regain the fertile land of Sayra. The Government of India, after the conquest of Sind, passed a Resolution (Ind. Doc. A-25) desiring that the branch of the Indus should be restored to its old course and directed a survey of the region to be made. Captain Baker, who was appointed to undertake the survey, was of the opinion that the lake at Sindri was an impediment to the restoration of the course of the river. The Rao stated that he had long intended to drain the lake but could not afford it but he would do so if the British Government allowed the river to flow (Ind. Doc. A-26). India says that these documents as well as the letter of Colonel Roberts, Political Agent, to the Secretary, Government of Sind, 1844 (Ind. Doc. A-27) establish that even in 1844 Sindri was regarded as being within the territory of Kutch.

Pakistan refers to the following passage in the Memoir of A. Burnes (Ind. Doc. A-5):

> "It (Sayra) included the country between Lucput, Sayra and Moondan and extended a few miles north of Sindri but did not cross the River in any place."

According to Pakistan, the District of Sayra was a projection of the mainland of Kutch since Lakhpat, Sayra and Moondan, which were on the mainland, were parts of the district and the district did not cross the river at any place and lay on the eastern bank of the river. It is also said that this passage establishes Sindri as the northern point of Sayra.

The Memoir of Burnes also states that "there can be little prospect of the people of Cutch regaining their fertile pergunna of 'Sayra' " and Pakistan contends that the word "regaining" indicates that Sayra was lost to Kutch soon after the earthquake.

Pakistan has drawn a sketch of what must have been, according to them, the District of Sayra (Pak. Map 105).

India, however, says that at two other places Burnes describes the District of Sayra as located on the "banks of the Indus". Relying upon the statement in the letter of Roberts at Indian Document A-27 that the District of Sayra "on the opposite side on western bank of the Khori bounded to the westward by a canal called 'Garee Wah' ", India says that the district extended much to the west of the western bank of the river.

(*b*) Kaeera Nulla: The Memoir of A. Burnes (Ind. Doc. A-5) says: "the Ameers of Sind acknowledge the right of the Cutch Government to a nulla called 'Kaerra' which is above Ullah Bund and the place where they collected taxes to the very day of the earthquake in 1819". India says that Kaeera Nulla was then within the territory of Kutch. Pakistan contends that there was a customs post at Sindri and it seems incredible that there should be another customs post at Kaeera Nulla so close to Sindri.

India also refers to another passage of Burnes which reads as follows:

> "A short distance from the bund (Ullah Bund) is Kaeera Nulla, a position where the Kutch Government collected taxes before the earthquake and the extremity of their territory on the north."

Pakistan's comment is that elsewhere he has referred to Sindri as the extremity of Kutch and hence he is not right in saying that Kaeera Nulla, which is a few miles to the north of Sindri, is the extremity. Pakistan adds that Burnes is the only one who talks about the extremity of Kutch being at Kaeera Nulla.

(*c*) Allah Bund: A. Burnes, *Travels into Bokhara* (Ind. Doc. C-7), contains the following passage:

> "A feeble and unsuccessful attempt was made by Cutch to establish a Customs house on the newly raised dam of 'Ullah Bund', but to this the Ameers of Sind objected, and Sindri being no longer tenable, the officers were withdrawn to the mainland of Cutch."

Pakistan says that this passage shows that the Amirs of Sind were in control of the area where Allah Bund was thrown up and it would have been possible only with their permission that Kutch could have established a post there but such permission was not given. India replies that the grounds on which the Amirs objected are not known. Apart from that, the statement may be hearsay.

(*d*) Wallassa: Relying upon a sketch of Sind (Pak. Map 109) by Frere, the Commissioner of Sind, appearing in Further Correspondence relative to the Introduction of a Rough Survey and Revenue Settlement in the Province of Sind, 1859 (Pak. Book 42), Pakistan argues that there was a territorial division of Sind marked "Walussa" in the map, which appears to have been abandoned and to have disappeared, and that the area covered by it is now in the Rann. According to Pakistan, this area ought to be regarded as part of Sind. India contends that the sketch was actually prepared by Mr. Arthur, Assistant Commissioner, as his Report in the same publication shows. The sketch was not made by a surveyor, it has no latitudes or longitudes and was principally intended to show the talukas of the various classes. The other portions of the sketch clearly indicate that they are all wrong; for example, the Thar Parkar peninsula is not there. India relies upon two other maps, Indian Maps TB-16 (a) and TB-16 (b), to show that Wallassa actually was in the interior of Sind and not in the Rann area.

Pakistan also relies upon a description in Selections from the pre-Mutiny Records of the Commissioner in Sind (Ind. Doc. CC-1) that "Wallasa Kuddan" was a purgana in the Hyderabad Collectorate. India points out that having regard to the Indian Maps TB-16 (a) and TB-16 (b), Wallassa Kadan must be in the interior of Sind and was probably Kadan shown in Indian Map B-44.

(*e*) Reports of Captain W. E. Baker, 1844 (Pak. Doc. B.271 and Ind. Doc. C-103):

By Resolution of the Government of India (Ind. Doc. A-25), Captain Baker was appointed to make a survey and report whether it was feasible to reopen the course of the Puran River to enable the Kutch territory to receive water from the irrigation. The first Report of Baker is at Pakistan Document B.271. He came to the conclusion that it was not possible to do anything about re-irrigating the Sayra District. In his Report, he says:

> "It will be recollected that the evil inflicted on Cutch was shared by thirty miles of Sind's territory."

The reference to the evil inflicted on Kutch is to the throwing up of Mora Bund by Ghulam Shah Kalhora which impeded the flow of the waters of the river.

Pakistan says that according to Baker's concept, the territory of Sind extended 30 miles below the Mora Bund and this brings it to Sindri.

India points to an earlier passage in the Report which says:

> "The effects of these bunds, though excessively injurious to the lands below (which by cutting off the supply of moisture they have converted into a barren and nearly uninhabited waste) have been by no means productive of unmingled benefit to those above. They have, it is true converted a large tract of country into a swamp well suited for the cultivation of rice but they subject it to the casual evil of submersion by an unusual flood before the bunds burst...".

According to India, reading this passage along with the one quoted by Pakistan, what Baker is saying is that the effect of the bund is to accumulate water towards the north of the bund, i.e., above the bund, and though at the beginning perhaps a little beneficial, on the whole it is injurious because it is said that they have been by no means productive of unmingled benefit to those above them. A distinction is drawn between the lands below the bund and those above the bund. The idea was to injure the people below the bund but it was of no unmingled benefit even to the people above the bund. The water being held up by the bund, would naturally spread over a very large area and convert it into a swamp. Thus, the expression that the evil was shared by 30 miles of Sind territory means really the evil was shared by the Sind territory above the bund. The interpretation sought to be placed by Pakistan is thus not correct.

Pakistan says that the evil shared by Sind has to be of the same kind as that shared by Kutch and when Baker said that 30 miles of Sind territory was also damaged, it must be the territory below the bund and not above the bund. The passage quoted by India speaks of unmingled benefit; it is a benefit for the lands above the bund as it converted a large tract of country into a swamp well suited for the cultivation of rice but it is unmingled as it also subjects that land to submersion during unusual floods.

The second Report of Baker (Ind. Doc. C-103) says that the restoration of the Nara would not only benefit Sind but could also benefit Khairpur and Kutch. Dealing with Kutch, it says:

> "The Rao of Cutch also has expressed himself very anxious for the reopening of the Narra which, where it approaches his territory takes the name of the Pooraun."

India contends that this indicates that the territory of Kutch commences where the Nara assumes the name of Puran, i.e., at the northern edge of the Rann.

(*f*) Paper entitled "Extracts from a Journal of a Trip to Sind from Kutch in 1852", by Colonel G. LeGrand Jacob (Ind. Doc. C-35):

Pakistan relies upon the following passage in this paper:

> "Khawra belongs to the Rao, it is a small town with a tolerable mosk, and barring a hamlet, is all His Highness is said to hold in Puchhum, which is owned by Summa Zumeendarrs, Mohommedans, in former days much addicted to plundering." (p. 22.)

Pakistan contends that, according to this passage, the Rao held only Khavda and a hamlet and the rest of Pachham did not belong to him.

The paper also refers to Drobana, where the Rao had a chowki (post) "to levy frontier duties" and Pakistan contends that if the frontier post was on Drobana, it means that Drobana was the frontier of the territories of Kutch. India states in reply that the entire territory of Kutch belonged to the Rao

but some villages or hamlets may not have belonged to him in the sense that he did not enjoy their revenue or any benefit from them as they were given away to the various Bhayads. It is in this sense that it is said that Khavda and the hamlet alone belonged to the Rao in Pachham. There was, no doubt, a customs post at Drobana.

(*g*) Letter from the Political Agent, Kutch, to the Secretary to the Government of Bombay and the Resolution of the Government of Bombay, 1877 (Pak. Docs. B.307 and B.308): The Political Agent, Kutch, reported to the Government of Bombay that a slight shock of an earthquake was felt at Khavda " in the northern limits of 'kutch'," and the Government of Bombay passed a Resolution that a copy of the Report of the Political Agent be forwarded to the General Department. Pakistan contends that this shows that the northern limit of Kutch was Khavda. India says that the Political Agent was obviously thinking of the mainland and not of the Rann when he described Khavda as the northern limit of Kutch.

(*h*) Letter from the Dewan of Kutch to the Political Agent, Kutch, 1880 (Ind. Doc. A-72): The British Government proposed to establish a Salt Preventive Service with a view to setting up posts to guard against smuggling of salt through the Rann. The Political Agent, Kutch, invited the views of the Dewan of Kutch, and the Dewan of Kutch, in his reply, made several proposals, including a proposal to set up a post at Dhara Banni. India contends that the inclusion of a post at Dhara Banni by the Dewan indicates that Dhara Banni was a part of the territory of Kutch.

Pakistan points to a passage in the Memorandum of the Dewan which says that the Rann intervenes between the mainland of Kutch and the opposite coasts of Sind, Gujarat and Kathiawar on the northern, eastern and a portion of the southern frontier of Kutch and argues that the Dewan thus stated that the Rann was on the frontier of Kutch. The Memorandum further says that unless effective preventive measures existed in the Sind, Gujarat and Kathiawar sides, the arrangements made in Kutch to prevent the removal of salt from the province would be incomplete and the Preventive Service proposed in the Memorandum for Kutch was based entirely on the supposition that such measures would be adopted on the Sind–Gujarat and Kathiawar sides. According to Pakistan, the various posts suggested by the Dewan included also the posts to be set up in places other than Kutch. Thus the proposal for a post in Dhara Banni does not mean that Dhara Banni belonged to Kutch. Apart from that, even if the Dewan did intend to convey that Dhara Banni belonged to Kutch, that does not carry the matter any further as such inclusion would not confer any title on him.

India replies that there is no question of the Dewan deliberately trying to include in his proposals something which was not a part of Kutch. The inclusion of Dhara Banni in the proposals is an item of evidence in favour of its being a part of Kutch. The Rann is described as lying between the mainland of Kutch and the other adjoining territories and such description cannot mean that the Rann was not a part of Kutch.

Pakistan points out that the Memorandum of the Dewan mentions at least one place, Bhangoria – which did not belong to Kutch – and yet, a post was

proposed there (MacClenaghan has described in Pak. Doc. B.214 Bhangoria Bet in the Little Rann as an island belonging to Dhranagadhra). The arrangements proposed by the Dewan were administrative arrangements which were never accepted or acted upon. The object was to establish a preventive cordon and it was not necessary that the cordon be placed on Kutch territory alone, it was to be put all around.

13. *The Rann as "No Man's Land"*

Though there are a few references in the documents on record mentioning the Rann as a "no man's land", it is neither Party's case that the Rann is no man's land. In fact, India's claim that the territory of Kutch extended up to the northern edge of the Rann necessarily implies that the Rann is not a no man's land. The same is the position with the case of Pakistan; according to Pakistan, Sind and Kutch were conterminous and India and Pakistan are also conterminous in the middle of the Rann. However, Pakistan says that if the Tribunal finds that the boundaries of Sind and Kutch were not conterminous in the Rann, the boundary line will have to be ascertained by the application of whatever considerations might apply. Pakistan adds that the factual position as regards the concept of different people is that the width of the Rann is the boundary and whether the width of the boundary is to be regarded as no man's land, or as land which is to be apportioned, or as an area other than land into which rights extend, there is no unanimity. If the Tribunal comes to the conclusion that it is in the nature of no man's land, it has to be apportioned because there are only two Parties and the Indian Independence Act has not operated upon it. Since the Rann is admittedly incapable of occupation, the description "no man's land" in a general way is compatible with that fact that it is not occupied by any State.

The documents which refer to the Rann as a no man's land are:

(*a*) Minute of J. B. Peile, Member of Governor General's Council, 1886 (Pak. Doc. B.310):

In 1881, a question was raised regarding the rights of the Tharad State in respect of certain salt deposits. The Government of Bombay having negated the rights claimed, the Tharad State submitted a Memorial to the Government of India (Pak. Doc. B.311). In the course of considering the Memorial, the Government of India referred the question to Peile for his informal views as he had a great deal to do with the matter when he was Political Agent in Kathiawar. Peile, in recounting the previous history, stating that between 1822 and 1840 the British Government bought up the salt works along the edge of the Rann belonging to the Indian States and also asserted its right to control the salt deposits along the edge of the Rann where it touches the Palanpur States, "partly because the Runn is no man's land, and partly because the Mahrattas had done the same".

(*b*) Letter of the Commissioner in Sind to the Governor of Bombay, 1896 (Pak. File 3 (f)):

The letter of the Commissioner in Sind which ended with the Bombay Government Resolution regarding Nara Bet Chain (Ind. Doc. A-88) contains the following passage:

"For the first 40 years of the century, in fact anarchy prevailed in this remote part of the country and the beyt was in "no man's land'. So no doubt the Thakurs on either side of the Runn occupied or claimed it, according as they had the power or the inclination."

(*c*) Letter from the District Magistrate, Thar and Parkar, to the Commissioner in Sind, 1898 (Pak. Doc. B.315):

In the Monthly Progress Crime Report of the Thar Parkar District, the Commissioner desired that particulars be furnished as to when a pending dacoity was likely to be disposed of. The District Magistrate explained that the dacoity took place in the Rann near Rahim ki Bazar and the question whether it occurred in the Thar Parkar District or not was referred by the District Superintendent of Police to the District Magistrate. The District Magistrate said that he was unable to ascertain the exact boundary and left the question open, thinking that the Government decision on the Nara Bet matter (Ind. Doc. A-88) would settle it, but since it had not done so he was obliged to refer the question to the Commissioner. Giving his own remarks on the question, he observed:

"The Police of this district as a matter of course inquired into offences reported along the Rann near its defined border on the British side, but with the apptt. of a D.S.P. the circumstances changed & he having officially raised the question it has to be disposed of. That it is in some respect a pity it has been raised is perhaps the case. The old arrangement worked well enough practically & the Rann itself (apart from the 'beyts' in which there were more or less valuable rights to be contested) has been looked on as a 'no man's land' in which on our side at least we have maintained order."

(*d*) Letter from the Deputy Collector, Thar Parkar, to the Collector Thar Parkar, 1938 (Pak. Doc. B.235):

During Osmaston's Survey, the Collector asked, through the Deputy Collector, the various Mukhtiarkars of Thar Parkar District to intimate the boundary between Sind and Kutch. While submitting the Reports of the Mukhtiarkars to the Collector, the Deputy Collector observed:

"As a matter of fact the Rann is not a paying tract and the barren nature of its soil has made it 'no man's land' and neither the British authorities nor the state Officers were ever keen for settlement of the boundary line in it."

India sums up its position as follows: Kutch asserted and reasserted that the Rann was a part of its territory; there were official documents and maps supporting the assertions of Kutch. Coupled with that there were the two historical incidents of 1914 and 1935. When Sind became a separate province, the question directly arose as to what its boundaries were and the boundaries were delimited on the official map and the description also was given. In the circumstances, nothing really can turn on unofficial accounts of geographers, Reports or Gazetteers.

The general reply of Pakistan is that in the Indian political system rights were not acquired, effected or transferred through any indirect method, be it Statistical Abstracts, Administration Reports, Gazetteers or maps. A direct decision at the competent level was the only method by which the right could be effected and rights determined. Pakistan further points out that when Bombay Administration Reports are properly analysed in a chronological order, such inference as is sought to be drawn by India does not in fact arise. Pakistan draws attention to the fact that equivocal phrases like "exclusive of the Rann" or "besides the

Rann" do not carry the implication contended for by India, which implications are manifestly contradicted by several factors in respect of other parts of the Rann. Finally, Pakistan points out that this category of evidence is irrelevant for the determination of rights within the British Indian political system and was never referred to in the disputes that were settled during the British times.

CHAPTER VIII: THE SIND–KUTCH BOUNDARY AS AN ISSUE IN BRITISH TIMES

This Chapter covers the four occasions – 1875–76, 1885, 1913–14 and 1935 – when the question of the Sind–Kutch boundary was considered by the highest British authorities in India. In 1875–76 and in 1885, the matter went up to the Government of Bombay; in 1913–14 the question was considered by the Government of India as well as by the Government of Bombay and in 1935 by the Government of India and the Government of Bombay.

In the opinion of Pakistan the 1913–14 case, resulting in the 1914 Resolution, does not concern the Sind–Kutch boundary as related to the Rann, while the 1935 case concerns merely the Sind boundary.

On the other hand Pakistan points out that the question of the Sind–Kutch boundary was dealt with by lower British authorities on at least six other occasions, i.e., in 1854–55, 1884, 1903, 1905–06, 1926–27 and 1937–38.

These cases are discussed in other Chapters as follows: the 1854–55 incident relating to guide-stones in the Rann and the building of a dharamsala at Gainda Bet in Chapter IX (Section 3.02), the 1884 correspondence in Chapter VII (Section 11), the 1903 incident relating to fishery rights in Chapter IX (Section 4.01), the 1905 correspondence in Chapter V (Sections 7 and 7A), the 1926–27 instance in Chapter IX (Sections 15.07 to 15.09) and the 1937–38 incident relating to Osmaston's Survey in Chapter V (Sections 8 and 8A).

1. *The 1876 Resolution*

In 1875 the Political Superintendent, Thar Parkar, informed the Mukhtiarkar, Diplo, that the Commissioner in Sind desired to know about the demarcation of the boundary between the State of Kutch and the Thar Parkar District and asked him to let the Superintendent know the boundary of Kutch State and the Thar Parkar District. He stated that the records of his office had been lost in a flood and hence no information in this regard was available in his office (Pak. Doc. B.3/2). The Mukhtiarkar, Diplo, replied in a letter in the Sindhi language (Pak. Doc. B.4). Since the translation of this document into English, as originally submitted, was considered to be not quite correct, Pakistan submitted a new literal translation of it (Pak. Doc. B.285).

In this document it can be read that

> "... in the midst of Kutch Bhuj and Taluka Diplo, District Tharparkar, from the Rann from Rahimki, coming in the north of Allah Bund, Mian ji Sari, the distance of which from Rahimki will be 24 miles, is the settled boundary, and from Vingur and Balyari, Gaind ji Chhan, where Dharamsala is built, the distance of which, from Balyari will be 24 miles, from where towards the north, at a distance of half a mile, the boundary of Diplo, and towards the south, boundary of Kutch Bhuj territory".

The Mukhtiarkar further stated that there were no boundary marks and added that

> "... in the days of the Mir Sahibs, on this side of Gainda, in the Rann whatever theft of duties was committed, was settled by the Government of Mir Sahibs; beyond Gainda, in the State of Darbar of Kutch Bhuj".

The Political Superintendent of Thar Parkar felt that the reply was "not definite, and to the point" and asked the Mukhtiarkar to state precisely "where exactly in the Runn the boundary lies so that the boundary between Cutch State and Tharparkar District may be fixed". The Mukhtiarkar was asked to investigate the matter thoroughly (Pak. Doc. B.5). The Mukhtiarkar then replied that the "Dharamsala is fixed as the boundary of the Tharparkar district, and Cutch State". He added that he had again "enquired from the well acquainted persons but the information is the same which has been supplied above". (Pak. Doc. B.6.)

Thereupon the Political Superintendent, Thar Parkar, reported to the Commissioner in Sind that though on the northern and eastern sides of the Thar Parkar District the boundaries dividing British territory from that of the adjoining Indian States were clearly demarcated, to the south there were no such boundary marks, and he could gather from inquiry that there were here and there certain spots in the Rann which were by custom generally accepted as showing the line of boundary between this district and Kutch State. He felt that it was desirable on all grounds that an "accurate boundary should be determined in the Runn" and suggested that the Political Agent, Kutch might be asked to meet him on the border (Pak. Doc. B.168).

The Commissioner in Sind forwarded a copy of the letter to the Government of Bombay with a recommendation that the course suggested by the Political Superintendent, Thar Parkar, might be followed, "as water from the Indus last year passed down the Narra and Puran to the confines of Cutch" and added that it was very desirable that "the actual boundary marks should be clearly defined". The Government of Bombay forwarded the correspondence to the Political Agent, Kutch, for observations or suggestions (Pak. Doc. B.170). The Political Agent, in turn, sent the correspondence to the Dewan of Kutch for remarks. He also inquired:

> "1. Whether the boundary between Thur Parkar and Cutch has ever been demarcated, if so the boundary should be described.
>
> 2. If not what has hitherto been considered as the boundary and what boundary does Cutch claim." (Pak. Doc. B.171.)

As the Maharao of Kutch died on 1 January 1876, the Political Agent, Kutch reported to the Government of Bombay that, owing to administrative arrangements consequent thereupon, he would be unable to visit "the frontier" and suggested that the question of having the boundary between Thar Parkar and Kutch authoritatively defined might be postponed till the next season when the views of the Kutch Darbar and its recommendations would be submitted.

The Government of Bombay then passed a Resolution, dated February 1876 (Pak. Doc. B.7, which is the same as Pak. Doc. B.283) that the letter of the Political Agent, Kutch, be forwarded to the Commissioner in Sind with an

intimation that "Government regret that for the reasons stated the demarcation in question must be postponed till next season".

The Parties do not disagree on the facts now stated but differ as to their interpretation.

Pakistan states: Everyone, including the Commissioner, knew, and no one had any doubt, that the boundary between the Thar Parkar District and Kutch was "in the Rann" and the only question was where exactly the boundary line was in the Rann. The Mukhtiarkar was asked (Pak. Doc. B.5), to give "precise" information and he finally reported (Pak. Doc. B.6), that the "Dharamsala marks the boundary between the Tharpakar District and Cutch Bhuj State". In the last paragraph of the Report he also stated that he "again enquired from the well acquainted persons, but the information is the same which has been supplied above".

Pakistan states that the original file relating to this incident is not available and Pakistan Documents B.3/2, B.4, B.5 and B.6 were sent by the Mukhtiarkar, Diplo, to the Deputy Collector, Thar Parkar in 1927 (Pak. Doc. B.3/1) and they were taken from the file in 1927. The Collector, who saw the file in 1927, referred to some slip in which the words "half and half" were used; he stated: "... we will continue to regard half the Runn as belonging to British and half to Kutch. V. Slip B on the old file you have put up". (Pak. Doc. B.223.) So on the 1875 file, Pakistan says, there must be some statement actually saying "half" although the words "half and half" are not used in Pakistan Documents B.3/2, B.4, B.5 and B.6.

Pakistan further points out that Pakistan Document B.4 fixed two spots: Mian ji Seri or the Seri of Mian and the dharamsala.

A literal translation of Pakistan Document B.4 was submitted by Pakistan as Pakistan Document B.285, the operative part of which reads as follows:

> "Submitted in reply that in the midst of Kutch Bhuj and Taluka Diplo, District Tharparkar, from the Rann, from Rahimki, coming in the north of Allah Bund, Mian ji Sari, the distance of which from Rahimki will be 24 miles, is the settled boundary, and from Vingar and Balyari, Gaind ji Chhan, where Dharamsala is built, the distance of which, from Balyari will be 24 miles, from where towards the north, at a distance of half a mile, the boundary of Diplo, and towards the south, boundary of Kutch Bhuj territory. On these boundaries, there is no boundary mark. Of these boundaries, the identification, known this way, that in the days of the Mir Sahibs, on this side of Gainda, in the Rann whatever theft of duties was committed, was settled by the Government of Mir Sahibs; beyond Gainda, in the State of Darbar of Kutch Bhuj." (Pak. Docs. B.4 and B.285.)

Pakistan is not able to explain precisely what the words "Mian ji Sari" mean. The various suggestions made are that they mean "a salt mian bet", "a salt bed of the middle", "a fishing pond" or a proper name. Mian ji Seri or Mian ji Sari is stated to have been situated 24 miles from Rahim ki Bazar.

Pakistan sums up by saying that, so far as the Sind side was concerned, the only question was to determine accurately where the boundary lay and not whether the Rann was to be divided or not. They knew it was half and half. The only question was one of accurate determination and delineation. Pakistan knows exactly what Sind was saying – that there were points here and there – and the one definite point indicated shows that the rule of half and half across

was being applied. It was stated that there was a traditional point beyond which lay Kutch territory and on the Sind side of which the Amirs had been settling whatever dispute had to be settled and that the boundary ran along that. There was no question at this state that the boundary was not to be demarcated. There was no question at this stage that anyone doubted that the boundary was not the Rann.

Pakistan says that two specific questions were addressed to the Dewan of Kutch but they were not answered and have never been replied to. The Dewan started collecting evidence; he asked the three Vahivatdars separately to collect evidence to prove that the whole Rann belonged to Kutch (*vide* Pak. Docs. B.173, B.174 and B.175). The tenor of the inquiries was such as if to indicate to the Vahivatdar that "the whole Rann is ours, please collect evidence for it". The Dewan was not wanting any contradiction on that point: it was a kind of implied assertion and was in line with what was put down in the Kutch Administration Reports.

Referring to Tupper, *Indian Political Practice*, Vol. II (para. 241), Pakistan states that the corollary is that once a matter relating to the boundary was raised, it became incumbent upon the ruler of an Indian State to obtain a decision if he so wished, otherwise the matter remained undecided, and on an undecided matter an Indian State *ex hypotesi* could not get any benefit. When Kutch was formally informed what the position in regard to boundaries was, it was incumbent upon Kutch to take certain steps and Kutch was avoiding this. It is true that the British also followed the policy of just leaving the matter alone; though it had been postponed only for a year, it was left at that. Pakistan emphasises that nothing was settled at this stage.

India argues that if the suzerain restricts itself to a particular boundary, which is the boundary stated by the vassal to be the boundary, why should the vassal ask for a declaration? Statistical records and correspondence were exchanged at the highest level – with the Government of Bombay, with the Government of India and even with the Secretary of State – which recognised and accepted a boundary showing that the entire Rann belonged to Kutch. Counsel for India states: "Against those you will have to put and estimate the value, which I say is nil, of some query raised, for a reason we do not know, by the Commissioner".

Pakistan says that in the Indian political system it was always for an Indian State to ask for and obtain determination of an undetermined boundary. The Paramount Power by reason of its very Paramountcy preferred to leave undetermined boundaries alone till forced to take them up. Thus, Pakistan contends that by mere omission the boundary cannot be treated as complete.

Pakistan further points out that this dispute related only to the latitudinal Rann boundary between Thar Parkar and Kutch and had nothing to do with the land boundary that came to be disputed in 1913 between Jati Taluka and Kutch.

India's comments on the incident are as follows: It is rather curious that the Mukhtiarkar who had been exercising jurisdiction in Diplo Taluka did not himself know what was within his jurisdiction and what was the boundary. He

had to ask some people who are called "well acquainted persons". It is not known who these well acquainted persons were, what was their status and what was their age. Reference is made to the Amirs of Sind exercising some rights in the Rann. It was only at the end of the eighteenth century or the beginning of the nineteenth century that there was any appreciable control exercised by the Amirs over the District of Thar Parkar. The information supposed to have been received by the Mukhtiarkar must relate to a period earlier than that. The Mukhtiarkar reported on hearsay evidence.

The Report of the Mukhtiarkar in Pakistan Document B.285 does not necessarily make sense. There has been a good deal of discussion about the words Mian ji Sari. The words are said to mean a salt bed, a fishing pond and so on but all these terms are vague.

Pakistan Document B.168 says that "there are here and there certain spots in the Runn which are by custom generally accepted as showing the line of boundary...". By whom was it "generally accepted"? Certainly not by the Government of Bombay, nor by the Government of India, nor by the Secretary of State, nor by the Dewan of Kutch, nor by the Political Agent. In Pakistan Document B.169, the Commissioner says "water from the Indus last year passed down the Narra and Puran to the confines of the Kutch". The river is called the Puran at the place where the British territory ends. And this is where the Puran itself ceases. This is all that the statement means.

The question raised by the Political Agent remained unanswered but there were Administration Reports for 1876–77, and there was the Dewan's Report on the administration of Kutch, containing the phrase that the area of Kutch is 6,500 square miles "exclusive of the Rann" which was subsequently repeated year by year. The Political Agent himself was the President of the Regency Council after the Maharao died and the Regency under the presidency of the Political Agent lasted for ten years. If he had wanted any answer to be sent it was easiest for him to send an answer.

It is said that the Dewan asked the Vahivatdars to gather evidence to prove that the Rann belonged to Kutch. That is perfectly natural when an inquiry is made. He asked for information in support of what he was saying; it was a straightforward inquiry.

To Pakistan's argument that by mere omission the boundary is not made complete, India states that if the boundary existed, it existed. There is no question of completing it. It is further said that Kutch never asked the Paramount Power to declare the boundary. The documents admitted that the Rann belonged to Kutch and there was no necessity for Kutch to ask for a declaration of the boundary.

As regards the quotation from Tupper, all that he said was that the Paramount Power was the only one competent to make a cession. But there is no question of any cession of territory here.

After the Resolution, the matter stopped there; nothing further was done. But there was a border. In his letter, the Political Superintendent said that the Political Agent, Kutch might be asked to meet him "on the border", that is some place which must be obvious to both as a place on the border; otherwise

there would be no question of meeting on the border. All that the Political Superintendent desired was that the boundary should be ascertained "accurately"; the incident does not mean the boundary differed by 100 miles but that there was a desire for a more accurately defined boundary.

Pakistan says: Whatever may be the nature of the sources of the reply from the Mukhtiarkar in 1875 this inquiry in due course yielded an answer pointing out two spots in the Rann as forming the boundary between Thar Parkar District and Kutch. The Mukhtiarkar was the person best qualified to give correct evidence that by custom the boundary was in the Rann. The fact that the boundary was in the Rann was taken for granted. The failure to answer the questions put to the Political Agent means that Kutch itself was not saying at the time that the boundary was demarcated and acknowledged the fact that a claim had to be put forward. Kutch acknowledged the obligation to put in a claim. It was asked the question and the answer was not given.

In February and March 1876, the Kutch Dewan issued instructions to three Vahivatdars to collect evidence relating to the boundaries of Kutch in the direction of Sind and Thar Parkar. The only replies given in response to these requests which have been exhibited in the case are two Reports issued by the Vahivatdar of Bhuj. His initial Report stated that he had been asked to give information

> "... regarding our limits towards Sind and Thal on the other side. But on inquiry it is found that at present on the other side, i.e., in the north beyond the Rann the land is not in our Vahivat. It is said that formerly Raema Bazaar and Badhina were under our 'Vahivat'. But at present the entire Rann is in our Vahivat and there is ample evidence for this. But I have not submitted them, as you have asked for evidences in respect of our jurisdiction over the other side and so those in respect of the Rann have not been submitted. That is the request". (Ind. Doc. A-66.)

After being asked by the Dewan to "collect and submit whatever evidences you may have in respect of our Vahivat over the whole of the Rann", the Vahivatdar despatched a second Report, dated May 1876, upon which India replies as showing the extent of the State authority exercised by the Maharao of Kutch over the Great Rann. The Report related to those parts of the Great Rann which fell within the jurisdiction of the Vahivatdar, viz., Lunavalo Rann and Pachhamvalo Rann.

The Report contained, *i.a.*, the following points:

> "3. From the village Dhrobana in Pachham up to the limit of the Rann in the north (where there is Narangrai tank and wherefrom Balihari is 1½ kos) guide stones have been fixed. These stones had been fixed by the Officer at Khavda at the Kutch Darbar's expense in Samvat (*here torn*).
>
> "4. On this above-mentioned road [from Dhrobana in Pachham up to the limit of the Rann in the north], there is a small bet named Gaida, wherefrom two different roads lead to Vingad and Balihari. There the Burbarshri has got constructed a resting place for travellers (Samvat 1914).
>
> "5. In the Rann, sale of cattle from Sind and other places takes place. On that sale the Darbari Officer collects levy on sale of animals and also 'Ukaru Dan' on the same animal is payable.
>
> "6. Hide of stray animal of any place dying in the Rann is taken possession of by the Bambhi [lessee for hides of dead animals] of Dhrobana in Pachham.

"7. In high level area of the Rann grass grown on account of the land there getting sweet. Such land is called 'Betda' by people. At present the following 'Betdas' are known:

"(1) Sindhi; (2) Kanjivalokot; (3) Charak Dhui; (4) Sharbela; (5) Gaidho; (6) Adhiang; (7) Dhera; (8) Akbani; (9) Thuvar Dhui; (10) Ker Dhui; (11) Bidhkabe; (12) Bid Bavarvalo; (13) Moti Bhiar.

"Inhabitants of the Pachham graze their herds of cattle in these Betdas and bring grass. Foreigners have no right to keep there their cattle. In course of time these Betdas disappear and also new ones are formed. These Betdas are the Rann area. They are, in fact, the Rann. As stated above they are under Kutch.

"8. In former times in the islet named Sindhdi, there was an office for the levy of 'Ukrau' duty for the Rann. But that office had to be brought to Luna due to flooding of salt water there as the result of the earthquake in Samvat 1875. At that place a buttress and a grave are even now seen. From here Raema Bazar is 8 Kos to the north.

"9. Inside this Sindhdi islet a Burbari Thana was maintained for guidance of travellers (before Samvat 1875). The Jamadar on this Thana was Lunai and the Burbar had bequeathed on him a right called 'Chowki' and 'Tansri' on goods in transit. It is said that the authorised document for that is still to be found with his descendants.

"10. It is said that there was a Durbari Thana in the Betda called Kanjivalo Kot in the Rann. The distance between that Betda and Raema Bazar is only one Kos.

"11. It is said that the water of an estuary of the river Indus, named Kori, used to spread over in the Rann and so rice and other crops were raised there. But in the aforesaid earthquake of Samvat 1875 the land and the level went up and down, and so the sweet water stopped spreading and sea water began coming. This resulted in the land being unfit for crops. Grindstones for separating rice from chaff which are still lying there testify to the fact that rice grew there". (Ind. Doc. A-66.)

Pakistan submits that it is stated by India that Chhad Bet, which is included in "Dhera" of the above list, is too far away from Kutch to be the grazing ground for Kutch cattle. Moreover, it was only in 1926 that an attempt was made for the first time to establish vahivat there.

India replies that the Kutch Darbar was not imposing any levy on cattle grazing in Chhad Bet and cattle from Sind were freely allowed to graze there. In 1926, however, the Kutch Darbar decided to levy panchari on grazing in Chhad Bet. It is not correct to say that the Kutch Darbar started a "new administration" of the Chhad Bet for the first time in 1926; what it started for the first time in Chhad Bet in 1926 was the levy of panchari or, in other words, revenue administration of the bet. The customs administration by the Kutch Darbar was already in force in Chhad Bet.

2. *The 1885 Resolutions*

As stated in Chapter V, Sections 6 and 6A, Major Pullan, Deputy Superintendent, Survey of India, undertook a survey of Kutch between the seasons of 1879–80 and 1885–86. In the course of the survey of Kutch, Pullan surveyed the Great Rann. In 1885, Mr. H. E. Watson, Deputy Commissioner of Thar Parkar, wrote to the Political Agent, Kutch, presumably in the matter, and the Political Agent replied to him stating:

"... there is no doubt the Cutch State contention is that the Runn is a part of Cutch. I am not aware that any claim has ever been made, or any authoritative decision arrived at. In 1876 the question of the boundary of Parkar was raised by your predecessor but owing to the late Rao's death at that time nothing was done". (Pak. Doc. B.8.)

Thereupon, Watson reported to the Commissioner in Sind that the Survey Party of Pullan extended their survey to the "Sind side of the Rann" presumably as "the Cutch Darbar contend that the whole of the Runn is part of their territory". He stated in his Report:

> "The natural boundary between Sind and Kutch is without doubt the centre of the Runn and this has always been considered to be the border by the people of Thar and Parkar... I cannot understand on what the Kutch Durbar propose to base their claims. It appears to me that supposing the Channel between France and England were to dry up the French would have quite as much right to the whole of it as the Kutch State has to the whole of the Runn. As however the country is being surveyed and mapped and as the Kutch Durbar contend that the whole of the Runn belongs to their State I have the honour to bring this matter to your notice as it appears necessary there should [be] an authoritative decision on the subject." (Pak. Doc. B.9.)

Commissioner Erskine, by a letter of 23 March 1885, submitted the Report of Watson to the Government of Bombay with the following remarks:

> "The Commissioner has heard nothing of the claim alleged to have been put forward on behalf of the Cutch Darbar and can hardly believe that such a preposterous pretension is ever likely to be seriously pressed.
>
> "As will be seen from a reference to any of the old Books, accounts or records describing the neighbourhood, the Runn has always been regarded as the boundary between the high or paka lands of Sind and Cutch... The Runn itself has undergone changes. Parts are covered with water for the whole or greater part of the year and parts after heavy rains and the Luni River at times runs down making a natural boundary.
>
> "It is perfectly well understood by the people on both sides of the Runn that the northern half of the Runn pertains to Sind and the southern portion adjoining Cutch territory to Cutch and part to Gujerat and the grazing and other privileges involved in such division are fully appreciated by the people. If any more defined boundary than now exists is required it should merely consist of boundary pillars as near the centre of Runn as possible. But the Runn is somewhat of the nature of a large river bed and what might be an admissible boundary today might appear absurd ten years hence...
>
> "The [Commissioner] has recently passed along this line of country and can speak from personal observation and local inquiry as to the utter unreasonableness of any attempt to separate the northern parts of the Runn from Thar and Parkar by any hard and fast delimitation." (Pak. Doc. B.378.)

The Government of Bombay forwarded Watson's letter and the Commisioner's remarks thereon to the Political Agent, Kutch, for his observations. The letter of the Political Agent is not on record. The Revenue Department of the Government of Bombay which was dealing with the matter, appears to have sought the advice of the Political Department of the Government of Bombay, which intimated that "the present question, which is without any real importance, should be avoided" (Pak. Doc. B.10). The Revenue Department then passed the Resolution of 3 July 1885, which is in Pakistan Document B.10, directing that a copy of Watson's letter be sent to Pullan, asking him to state "on what understanding he has included the Runn in his survey and how he proposed to describe it in his map". The Resolution added: "It may be intimated to him that this Government in the Political Department does not desire that any question of boundaries in the Runn between the Province of Sind and the Cutch State should be raised."

Pullan's explanation was:

> "... I surveyed the Runn because it is intimately connected with the country of Cutch and it was an absolute geographical necessity that it should be surveyed. I have

carefully abstained from laying down or even suggesting any boundary between Cutch and Sind. When any such boundary is determined on it would be desirable that it should be communicated to the Survey Department.

"I would remark that it was I who in the first instance pointed out to the Deputy Commissioner, Thar and Parkar, the absurdity of the claim put forward by the Cutch Darbar". (Pak. Doc. B.11.)

The Government of Bombay then passed the Resolution of 7 August 1885, which is in Pakistan Document B.11, directing that Pullan's letter be forwarded to the Commissioner in Sind and the Deputy Commissioner, Thar Parkar.

Both Resolutions are headed "Boundary Disputes: Claim of Cutch Darbar to the Sind side of the Runn".

The facts now stated are not controversial, but the implications of the entire incident are disputed.

The arguments of Pakistan may be summarised thus:

Watson wrote to say that he was apprehensive that Pullan's inclusion of the Rann in the survey was a step in aid of the Kutch contention that the whole of the Rann belonged to Kutch, which was contrary to the traditional boundary and to the natural boundary – the people of Thar Parkar had always considered the border to lie in the centre of the Rann; the grazing lands were determined by the nearness of shores; there were many other complications which arose from the contention of Kutch. He put forward the point that Pullan's inclusion of the Rann in the survey appeared to be a step in the wrong direction and he brought it to the notice of the Commissioner. The important part of Watson's letter is the factual statement that "this has always been considered to be the border by the people of Thar and Parkar". That is direct evidence given by a man who knows where the traditionally known boundary is. He then points out the natural right of a State to defend itself in the following words:

"4. I need hardly point out the many difficulties that would arise were the Kutch claim conceded. A glance at the map will show that Parkar would be a peninsula almost entirely surrounded by Kutch territory. The Kutch State could erect fortifications and establish Custom houses at places situated many miles within the district for instance close to Veerawah, or on some of the roads which, crossing inlets of the Runn, lead from one part of this district to another."

Pakistan concludes the point by saying:

"An artificiality of this kind which militates against natural rights is not likely to be accepted and there is a presumption against it, that it is not likely to come about in the ordinary course of relations and transactions between States." (Verbatim Records, p. 17391.)

Pakistan further argues:

"The Commissioner not having heard of the claim alleged to have been put forward is significant. It means that not only has no claim been formally made but that such ideas about a claim the Kutch Darbar may be entertaining are not known in official circles. He has not even heard of the claim alleged to have been put forward... He thinks that this is too preposterous to be pressed. He does not believe that anyone would seriously pursue this kind of a line." (Verbatim Records, p. 7822.)

"There existed references in the Kutch Administration Reports to the Rann forming a part of Kutch, but the Commissioner, the Chief Administrator of a Province, had never heard of them. A very clear exposition is given by the Commissioner, the man who knows. He mentions that the old books, accounts or records describing the neighbourhood have always regarded the Rann as the boundary between the high and paka lands

of Sind and Kutch. Here is an Administrator giving evidence of his knowledge acquired in the course of his administrative functions. He says that it is perfectly well understood by the people on both sides of the Rann that the northern half of the Rann pertains to Sind and the southern portion adjoining the Kutch territory to Kutch. He is not only unaware that traditionally the northern edge of the Rann was the boundary but he makes a positive assertion to the contrary. According to him, the Rann itself is the boundary but if a more defined boundary is required it should merely consist of boundary pillars as near the centre of the Rann as possible. But he argues against such a more defined boundary and suggests that the Rann is the boundary and it may be left at that." (Verbatim Records, pp. 16942–51.)

To a question by the Tribunal whether Watson was concerned with the boundary between Thar Parkar and Kutch, Pakistan replies that when Erskine and Watson and people who knew the area were talking of the Rann between Thar Parkar and Kutch, they were talking of what Pakistan has called the Rann proper which lay to the east of the Khori River; the area to the west of Khori River being the land area.

As regards the Resolutions, Pakistan stresses their very heading. This shows that the Rann has two sides – one side was the Sind side, the other was the Kutch side; the claim of the Kutch Darbar was to the Sind side. The heading implies the concept of half and half which Kutch sought to disturb. The Resolution of 3 July 1885 required an explanation from Pullan why he had included the Rann in his survey and gave clear instructions to him that the question of the boundary in the Rann between Sind and Kutch should not be raised. That does not mean that the Government approved a boundary being shown in the middle of the Rann but that it hesitated, and it told Watson and the Commissioner to leave the question alone for the time being. Watson's letter was approved by the Government but British policy was to avoid raising questions which might be undesirable.

If the boundary had been settled and accepted, runs the argument of Pakistan, the point could not arise. To say "do not raise the question" means that the question is there – "but do not stress it, do not agitate it". The Government could have told the Commissioner that he was wrong and the boundary was settled. It is not as if there was diplomacy involved between the Government and the Commissioner. The Resolution clearly kept the question alive but said that it was not thought politic to press it.

In giving his explanation, Pullan defended himself by saying that he did not survey the Rann in aid of any contention of Kutch that the Rann was a part of Kutch and that in fact he had carefully abstained from laying down or even suggesting any boundary between Kutch and Sind. He went on to say that when a boundary was determined, it would be desirable for it to be communicated to the Survey Department. Then in his own defence he said that it was he who in the first instance pointed out to the Deputy Commissioner the absurdity of the claim put forward by the Kutch Darbar. His pointing out the absurdity of the claim cannot be construed as meaning that Pullan had conceived the idea that the boundary should be challenged. The question of an accurate boundary line in the Rann had been raised in 1875 – ten years earlier – and it was not a brainwave of Pullan's.

The Resolution of 7 August 1885 shows that the Government thought that

the explanation of Pullan should satisfy the Sind authorities who were apprehensive. The position was that no determined boundaries in the Rann existed but the clear position of Sind was that the boundary divided the Rann half and half and this was not questioned by the Government. Having received Pullan's explanation, the Government sent it to Sind which had raised the objection. Had the boundary been determined, it would have said so.

The two Resolutions taken together expressly say that there is no boundary; the explanation of Pullan was approved and sent to the Commissioner in Sind. Sind was saying that the boundary was in the centre of the Rann but that they did not know exactly what the Kutch claim would be because Kutch was asked two specific questions in 1875 and never replied. There were, however, indications that the contention of Kutch was that the whole of the Rann belonged to it. The Resolutions laid down that the question should not be raised; it would be dealt with when the issue was really forced. In 1885 it was quite clear to everyone that there was no determined boundary and Pullan requested the Government that, when the boundary was determined, the Government should inform the Survey Department so that it could act accordingly. Having accepted Pullan's explanation, the Government sent it to the Sind authorities which had raised the objection. The Government pointed out that it had resolved that for the time being it did not consider it politic to raise the question, which could be left undetermined.

Pakistan points out, besides, that the statement of Watson, that the natural boundary between Sind and Kutch was without doubt the centre of the Rann, was later, in 1893, regarded by the Commissioner, in his letter to the Deputy Commissioner, as a statement of principle.

Pakistan further refers to the following statement of Counsel for India:

> "... assume for the purposes of argument, everything right up to 1886 is wiped out because of the Government Resolution saying we do not want to decide the question. Assume that, what is the position after 1886? The Resolution of the Government says, we do not want to raise the question. Assume the effect of that Resolution is – it is not – but assume the effect is that all the past is wiped out, everything in my favour in the past is gone". (Verbatim Records, p. 1886.)

Commenting upon this statement, Pakistan emphasises that, unless a Government Resolution is rescinded, it will wipe out not only the past but will also prevent contravention in the future. Thus,

> "Once one takes that step that everything in the past has gone, it will nullify any future conduct which is inconsistent with it as well. If the past has gone, it is because the Government has said that they did not wish the question of boundaries to be raised, which necessarily means that the question of boundaries is pending, which in turn necessarily means that there is no determined boundary, and the two Resolutions together expressly say so." (Verbatim Records, p. 7872.)

According to India, it was, as Pakistan Document B.11 shows, at the instance of Pullan that the question regarding the boundary between Kutch and Sind was raised by the Deputy Collector of Thar Parkar. Pullan was clearly told to survey Kutch; he knew that the Rann was a part of Kutch; he surveyed it as a part of Kutch. Almost at the end of the survey, Pullan, for reasons best known to himself, incited the Deputy Commissioner to make his Report.

The Government of Bombay, India argues, knew perfectly well – and it had itself admitted it – that the Rann belonged to Kutch and hence it observed in the Resolution of 3 July 1885 that it did not desire any question of the boundaries in the Rann to be raised.

If there was any real question about the boundary the Government could very well have approached the Kutch Darbar and adjusted it but it did not want to raise the question again.

When Pullan was asked for an explanation, instead of saying that he was told to survey Kutch including the Rann and he had surveyed the Rann as a part of Kutch, he stated that he surveyed the Rann because it was intimately connected with the country of Kutch. He had shown the boundaries till then but thereafter he stopped showing the boundaries.

The Resolutions show that the claim made by Sind was not accepted by the Government of Bombay. India adds:

> "All that it [the Resolution] says is that the question is not to be raised ... can you attribute this conduct to a policy which on the one hand keeps on saying and accepting at the highest levels that the Rann is a part of the territory of Kutch ... on the other hand, because it is intricate to open it, because they want to please this State, therefore at that stage they were not going to say anything?" (Verbatim Records, p. 10876.)

Subsequent maps and records accept the boundary of Kutch as lying along the northern edge of the Rann. India continues: From the list of the authoritative Administration Reports published by the Government of which he, Watson, was a subordinate officer, one finds that the higher authorities, his superiors, take the contrary view. Despite his indicating this to the Commissioner of Sind, the Administration Reports do not support him. The maps do not support him. When the second survey was made in 1903–05, again the results of that survey did not support him. The second official survey after 1885 supports Kutch, and the whole of the Rann is shown as part of Kutch. When the historical decision was made in 1914, after six years of dispute and difficulty, 1908–14, one finds that Watson is not supported. The purple line is shown as the boundary of Sind which is the northern edge of the Rann of Kutch. In 1935 when a decision had to be made, the Commissioner in Sind, the Superintendent of Survey in Sind, the Bombay Government and the Government of India were all consulted. They did not support Watson. They said that Sind was to the north of the Rann of Kutch and that no part of the Rann was in Sind.

As regards the comment of Pakistan that unless a Government Resolution is rescinded, it will wipe out not only the past but will also prevent contravention in the future, Counsel for India replies:

> "I fail to see on what principle of general law, constitutional law or international law a Government, having said in 1885 that they do not desire the question of boundaries to be raised, cannot in subsequent maps and subsequent documents accept and recognise a certain boundary without a formal rescission of this Resolution. It is not necessary to rescind the Resolution." (Verbatim Records, p. 14103.)

In support of the argument that Pullan knew that the Rann was a part of Kutch and surveyed it as such, India has relied upon a number of documents, which are discussed in Chapter V.

3. *The 1914 Resolution and the Erection of Pillars in 1924*

(*a*) *The Resolution*

In 1907–08 the Commissioner in Sind complained to the Government of Bombay about certain incidents which, in his opinion, constituted encroachments by the Kutch State upon the territory of Sind. When the Kutch Darbar was asked for an explanation through the Political Agent, Kutch, the Dewan contended that the region in which the incidents took place formed part of the territory of the Kutch State. The Government of Bombay was inclined to the view that, if the evidence on both sides was carefully collected and examined, there would be no difficulty in coming to a friendly compromise with the Kutch Darbar and in arriving at a definite frontier line. The Kutch Darbar was accordingly informed that, ever since the conquest of Sind, the Khori Creek had been regarded as the boundary between Sind and Kutch and that – if the Darbar had reason to think this boundary was inaccurate – the Government was perfectly willing to consider any representation it might have to make and that, in that case, the Darbar should state precisely and with an accurate map the boundary which it claimed, specifying the grounds on which its claim was based. The Dewan of Kutch thereupon made a representation (in Ind. Doc. A-31), to which was annexed a map (Ind. Map B-44) showing a green line thereon what the Kutch Darbar contended to be the true boundary between the Kutch State and the Province of Sind. (The map did not have the blue dotted horizontal line, which was later drawn by the Government of Bombay.)

The Government of Bombay called for comments of the Commissioner in Sind on the representation and he, in turn, asked for the views of the Collector of the Karachi District. After the comments of the Commissioner in Sind had been received along with the views of the Collector of Karachi, the Government of Bombay thought it desirable to arrive at a friendly understanding or compromise, based on the available material.

The Government of Bombay then wrote to the Government of India, setting out the entire position, including the representation of the Kutch Dewan, the relevant correspondence, its own views on the rival evidence and the terms of the compromise proposed by it. This compromise had been put to the Rao, who had expressed his willingness to agree to it, provided that the Government of India sanctioned the proposed boundary. The Commissioner in Sind had also agreed to the adoption of the blue dotted line running due east from the top of the Sir Creek as the frontier line. The letter from the Secretary to the Government, Bombay, to the Secretary to the Government of India, Foreign Department, dated 20 September 1913 (No. 5543), included the following statements:

> "9. On a full review of the evidence, therefore, Government arrived at the conclusion that the boundary between Cutch and Sind should be the green line in the accompanying map from the mouth of the Sir Creek to the top of the Sir Creek at the point where it joins the blue dotted line; from there it should follow the blue dotted line due east until it joins the Sind boundary as marked in purple on the map [Ind. Map B-44], and His Highness the Rao has now expressed his willingness to agree to this compromise.
>
> "10. On this proposed settlement being referred to the Commissioner in Sind that officer agreed to the adoption, as the frontier line, of the blue dotted line running due east from the top of the Sir Creek. He observed, however, that the Sir Creek changes its course from time to time and the western boundary of the area, which it is proposed to

surrender to the Rao, should, therefore, be described as 'the centre of the navigable channel of the Sir Creek'. A similar method has been adopted in determining the boundary between the Khairpur State and British territory where the river Indus is the boundary, and the position of the navigable channel varies from year to year.

"I am to explain that the term 'navigable' is really inappropriate in the larger sense. The creek is, of course, tidal, and it is only at certain conditions of the tide that the channel is navigable and then only to country craft as far as the point from which the proposed boundary turns due east from the Creek". (Ind. Doc. A-31.)

The Government of India sanctioned the proposed compromise by a letter dated 11 November 1913 from the Assistant Secretary to the Government of India, Foreign Department, to the Secretary to the Government of Bombay, which reads:

"I am directed to acknowledge the receipt of your letter No. 5543, dated the 20th September 1913, regarding the proposed rectification of the boundary between Sind and the Cutch State.

"2. The Government of India observe with satisfaction that the dispute between the Sind authorities and the Cutch Darbar has been settled by a compromise agreeable to both parties, and are pleased to accord their sanction to the rectification of the boundary line proposed in paragraphs 9 and 10 of your letter." (Ind. Doc. A-33.)

Upon receipt of this letter, the Government of Bombay, on 24 February 1914, passed a Resolution reading as follows:

"RESOLUTION. – Copies of the above letter from the Government of India, and of the letter No. 5543, dated the 20th September 1913, to which it is a reply together with a copy of the map showing the rectified boundary should be forwarded to the Commissioner in Sind with reference to his letter No. 106 – Confl., dated the 26th April, 1912, and to the Political Agent, Cutch, with reference to his letter No. 103, dated the 18th June 1913.

"The Political Agent, Cutch, should be requested to communicate the purport of the orders of the Government of India to His Highness the Rao of Cutch."

The implications of the incident described above are at issue between the Parties.

India submits that the Resolution implies the following: The boundaries of Sind were shown in Indian Map B-44 by a purple line, The Dewan of Kutch claimed the area from the top of the Sir Creek to the trijunction point of Jati and Badin Talukas in Sind and the Rann of Kutch as indicated by the green line on the map; the Sind authorities, on the other hand, were claiming that the boundary should follow the purple line from the mouth of the Khori Creek to the top of the Khori Creek and from there due north to the trijunction point. The compromise arrived at was to leave to Sind the triangle formed by the three following points: top of the Sir Creek, the meeting point of the blue dotted line with the purple vertical line and the trijunction, being the meeting point of the green line and the purple vertical line. From the trijunction point, the purple line running along the northern edge of the Rann till it meets the trijunction point of Jodhpur, Sind and Kutch, was recognised by the Sind authorities, the Government of Bombay and the Government of India as representing the Sind boundary. Such recognition implies that the only dispute between Kutch and Sind was as regards that territory which lay between the Sir Creek and the Khori Creek and that the southern boundary of Sind along the northern edge of the Rann represented by the purple line was undisputed. Had this not been the position,

reservations would have been made by the Sind authorities, the Government of Bombay and the Government of India and both the compromise and the Resolution would not have been drafted in the way they were.

Pakistan denies that the implications sought to be derived by India follow from the Resolution. Pakistan's contentions are as follows: the Resolution distinguishes between "boundary between Kutch and Sind" and the "Sind boundary". In fact, the Khori River formed the boundary between Sind and Kutch in the past. When the river dried up and its course was altogether obliterated, it became practically impossible to separate "the lands of the lower delta" from the Rann, and a notion appears to have erroneously persisted that, to the west of the line that might be fixed as a replacement for the western shore of the Rann, there was a land boundary. Any such erroneous assumption that a boundary between Sind and Kutch existed along a vertical straight line, would not necessarily imply that those who made it were also thinking that this boundary would extend eastwards to the eastern shore of the Rann. Such an assumption would be unintelligible since in the days before as well as after the Resolution, the Sind authorities regarded the northern half of the Great Rann as Sind territory.

There were two distinct disputes, Pakistan argues, between Sind and Kutch, one involving the lands of the lower delta and the other involving rights in the Rann. It was the policy of the British not to bring either of the two disputes to a head until "forced". The Kutch Darbar created incidents to force the dispute as to the lands of the lower delta, but preferred to leave the other dispute "unforced" and the British were content to leave it at that.

The purple line in Indian Map B-44 from the trijunction point eastwards runs along the boundaries of settled dehs. In any case, the allegation by India that certain authorities recognised the purple line as representing the Sind boundary cannot imply that those authorities also recognised that what lay to its south was Kutch, nor would it imply that the dispute that came to be settled by the compromise in 1914 was the only dispute between Sind and Kutch. The Sind authorities insisted all along that the northern half of the Rann belonged to Sind and the Governments concerned, far from acknowledging the claim of Kutch, adopted the policy of "letting sleeping dogs lie". India has not even asserted that the Sind authorities or the Governments concerned ever gave up the claim to the northern half of the Rann or recognised the claim of Kutch to that half. The Dewan of Kutch did not assert, at the time of putting forward his claim to a portion of the lands of the lower delta, that the northern half of the Rann also belonged to Kutch and from that omission it is to be inferred that it had given up its claim, if any, to the northern half of the Rann and had accepted the Sind position.

The Sind authorities were dealing with the claim of Kutch to "a considerable slice of territory north-west of the Khori Creek" as distinct from the dispute relating to the Rann itself.

The episode of the claim of the Dewan of Kutch, far from making the claim of Pakistan unsustainable, brings into sharp focus the unsettled dispute between the Province of Sind and the State of Kutch relating to the Rann, which con-

tinued to remain unsettled and, if anything, shows that the Kutch Darbar, when taking up the question with regard to the boundary between Kutch and Sind, by the omission to refer at all to its other claim, must be considered to have abandoned that claim.

Pakistan further says that the Rao's letter of acceptance (Ind. Doc. A-2) classifies the portion of the boundary to which the dispute related. It refers to "the Lakhpat Sind boundary question". The reference to the pending boundary question implies a reference to the Lakhpat Sind boundary only. The question of the boundary between Sind and Kutch in the Rann was a separate issue, which had been disputed ever since 1875. It is not reasonable to assume that when the dispute relating to Nara Bet or to a portion of the lands of the lower delta was being made the subject matter of express consideration, a Resolution was adopted by which the vast tract of the Rann would be disposed of by mere implication. Indian Map B-44, which was produced by the Kutch Darbar, shows a yellow riband separating Kutch from the Rann. This shows that the Maharao admitted that his territory did not include the area marked as the Rann. The submission of such a map by Kutch clearly indicates that the only matter which it wished to take up with the British was the matter of that portion of the lands of the lower delta which lay directly to the north of the Khori Creek.

While a copy of the Resolution was sent by the Commissioner in Sind to the Collector of Karachi and other officers, no copy of it was sent either to the Collector of Thar Parkar or to the Collector of Hyderabad, showing thereby that the Commissioner in Sind regarded the Resolution as a settlement of the portion of the Sind boundary that concerned only the District of Karachi and not any other district.

India submits as follows:

The Resolution established the boundary to which earlier maps had all referred – not only a part of the boundary but the boundary as a whole. It was the British case that the boundary had been well settled all over but Kutch said that so far as its claim was concerned the boundary required readjustment.

There was at no stage any question about a dispute as to the boundary from the trijunction eastwards. India pointed out that as a result of the compromise, the purple line to the south of the blue dotted line disappeared and, as it were, a corridor was opened between what came to Kutch by the Resolution and what was Kutch before so as to join it up in one.

As regards the yellow riband, India explained that it enclosed the mainland of Kutch and no reference can be drawn therefrom that the Rann did not belong to Kutch; it was pointed out that there a portion of the Rann was also enclosed in yellow, which was admittedly a part of Kutch, and it follows therefore that the yellow line was not intended to indicate a State boundary.

There is also a boundary symbol running all the way along the purple line but there is no such boundary symbol along the edge of the mainland of Kutch. The Kutch Darbar sent a map which showed the boundary as running along the Rann, the two loops and the north-south line down to the top of the Khori Creek and which also shows the green line as indicating what the Kutch Darbar claimed as an adjustment to be made in the boundary. At no stage was any

question raised by the Government of Bombay as to the correctness of the line as shown from west to east. In fact it also maintained that the upright line was the boundary. At no stage did anyone complain of the correctness of the map or suggest that the boundary was different from what was shown on the map or that the boundary was not determined. Had there been any question, the Government of Bombay would immediately have said: we do not accept this; we say that this upright line is the boundary; you are bound by it as between east and west; but so far as you show the northern edge of the Rann as dividing Sind from the other side, we do not accept that part of it – we will confine ourselves to the upright line.

In all the correspondence which took place between the parties, no one disputed, not even Sind, that this vertical line was the boundary all along. The point in dispute was whether Kutch was entitled to claim any area to the west of this vertical line. If this vertical line was not the boundary at all and there were "lower delta lands" to the east of this vertical line which were a part of Sind, one would surely have expected the Sind authorities to ask how Kutch could possibly claim something to the west of this vertical line when it was not entitled to the territory even to the east of the line. The decision was reached after six years of discussion and no one suggested that this vertical line was not the boundary.

The Maharao of Kutch sent a map in which he marked the Sind boundary as it stood in purple. Then he said that he claimed an additional triangle. The British said they would compromise and give him the southern portion which would be demarcated by a blue dotted line, which would run until it joined the purple boundary; that is, the purple line all the way round.

Had there at this stage been any mistake or confusion, it would undoubtedly have been rectified.

On a series of maps the British authorities themselves had shown a particular line as the political or State boundary; the Maharao of Kutch said "I accept this boundary. I claim this. It has been taken by you as a boundary except in one place where I say that by cultivating a portion or occupying it, I have not committed a wrong but I have only claimed that part which belongs to Kutch." Upon that there is this Resolution and an agreement that a particular line shall be the boundary between the two States.

India also objected to the submission of Pakistan that there were two disputes – one relating to the portion which was settled by the Resolution and the other relating to the Rann which remained unsettled.

India points out that the words used by all parties concerned are "rectification of the boundary"; the word "rectification" of the boundary suggests that it is correction of an existing boundary. The dispute arose in respect of one part of the accepted boundary when the Maharao said: "True, here is the boundary which has been there ever since the Conquest, but in one particular respect it is wrong and I ask for it to be rectified".

The boundary which had throughout been recognised and had existed as a traditional, known boundary, was amended and rectified in one particular. The

foundation of the agreement of 1914 is a consensus of both parties that there is a boundary existing but that in one respect it requires to be "rectified".

According to India the attitude of the British Government was that all along the Rann the boundary was undisputed; a claim was raised to the lands at the western end and the dispute related to that end; the only pending boundary question was the question relating to the western end. If the rest of the boundary was pending, the British could have said "Well, we concede this portion but beyond that point the boundary is not settled." The Resolution itself says that the blue dotted line is to join the purple line which denotes the boundary of Sind. You cannot, after that, stop at the trijunction and say: "no further", because you come to an impossible position.

The Kutch claim for rectification concerned only the western part of the boundary. Therefore only the Collectorate of Karachi was affected by the claim and that is why, when the matter was settled, the Resolution was sent only to the Collector of Karachi for implementation.

Pakistan answers as follows:

The Government of Bombay had said in a letter to the Political Agent, Kutch, dated 7 September 1910, as quoted by the Political Agent, that "Government are perfectly willing to consider any representation the Darbar may have to make if they have reason to think that the boundary between Sind and Kutch as laid down in Survey Sheet No. 75 of the Sind Survey is inaccurate..." (in Ind. Doc. A-31.) Sheet No. 75 covers the Khori Creek and the vertical line below the 24th parallel. No portion of the vertical line above the 24th parallel is covered by that sheet. The only boundary to which the representation referred was the one in Sheet 75 and the Darbar was making it quite clear what it was challenging. But the green line in Indian Map B-44 goes beyond Sheet 75. The conclusion drawn factually in the Resolution was erroneous. The ultimate decision in such cases was by the Paramount Power and the level at which the Paramount Power would act would be the Secretary of State. If it were a minor adjustment, it would not be necessary to make a reference to the Secretary of State but wherever concession or cession of territory was involved, it was necessary. In the 1914 matter, probably putting it in the category of a boundary adjustment, the Government of India never referred it to the Secretary of State. Actually a little excess of authority was taking place at each step. There is no reference in the Resolution to the vertical line as something that would later be included as a part of the Sind–Kutch boundary. It is the blue dotted line alone to which sanction was given by the Government of India.

Indian Map B-44 shows a boundary for Kutch in a yellow riband. India had pointed out the existence of a yellow riband around an internal lake in Kutch; but one must not overlook the fact that there is a boundary shown around Kutch, otherwise there is no meaning to the yellow riband. The yellow riband marks Kutch; the purple riband marks Sind. Along the Khori Creek there is the purple riband on the Sind side and the yellow riband on the Kutch side. No one could possibly put any other interpretation on it but that the yellow band is the Kutch bank and the purple band is the Sind bank. Besides, Pakistan stresses that the internal lake in Kutch is indicated by a yellow riband in Pakistan Map

134 (1871), it seems likely that the yellow riband around the lake was reproduced in Indian Map B-44 from Pakistan Map 134.

India said that the straight line represented the boundary between Sind and Kutch. India has not shown how that line emerged, how it became the boundary between Sind and Kutch. Nowhere had the straight line ever been mentioned as ending Sind and marking the termination of the extension of Kutch.

India correctly states that the 1914 Resolution was a compromise, a sort of half and half. But the important thing about this sort of half and half is the location of it. Just about two minutes short of the 24th degree of north latitude the line runs as a straight arbitrary line and the alignment is practically the alignment on Pottinger's map (Pak. Map 1).

The sanction of the Government of India was given to a compromise arrived at between the Bombay Government and the State of Kutch. There is no mention of any proclamation altering the boundaries which constitute the Province of Sind. Nevertheless, Pakistan does not challenge the transfer of the area to the south of the blue dotted line. Pakistan has always accepted it and before Pakistan, Sind had accepted it and it had been acted upon. The transfer of British territory could not be made without the previous sanction of the Secretary of State. Since Pakistan does not claim the area that was transferred, the legality of the Resolution is discussed only for the purpose of any inferences or implications that might be drawn from it, because if it was an illegal transfer then even though the operative portion of it may not be challenged – it has been acted upon for several years – the implications, anyhow, cannot arise.

The only thing that happened afterwards, apart from the erection of pillars, was what is to be found in Pakistan Document A.4, i.e., a notification issued by the Commissioner in Sind excluding from the Karachi District the area below the blue dotted line in consequence of its transfer to the Kutch State under the authority of the Resolution. This was done by the Commissioner in the exercise of certain powers delegated to him, but there was no proclamation by the Government of India and no compliance with the law. The area transferred according to the notification was 76,527 acres and 23 gunthas, which corresponds to about 119–120 square miles; however, 550 square miles is the correct area of the area that was transferred (Pak. Doc. A.4).

The submission of India that the Resolution implies recognition that the territory to the south of the purple line to the east of the northern trijunction must be Kutch is neither to be spelt out from the Resolution, nor is it compatible with the state of facts as they existed at that time. The question of boundary in the Rann was raised in 1875, and expressly kept open in 1876 and 1885, and was still pending at the time of this Resolution. The description of the trijunction describes it as being a trijunction between the Hyderabad and the Karachi Districts and the Rann of Kutch – not Kutch State.

Pakistan submits that along the Khori Creek in the Resolution Map (Ind. Map B-44), the yellow band is the Kutch bank and the purple band is the Sind bank. If a conterminous boundary is to be marked in the Khori Creek, it will have reference to the rule that might be followed in a tract like the Khori Creek. The same can be applied to the Rann also because the depletion of Sind and Kutch

mainland by colour ribands remains the same as on Khori Creek. The Khori Creek opens out into the Rann. The Khori Creek and the Rann are joined to each other as an extension of each other. If the boundary in the Khori Creek is in the middle, the same will continue to be so right through the Rann. That is what the Resolution Map is showing. The Resolution is not a document which complies with the legal requirements or which could have had any legal effect. It is only because and to the extent that it has been acted upon that it has not been challenged.

No implications and inferences ever arise from decisions. One does not extend a decision by implications and inferences and say that because something has been decided, by inference something else is also decided. Decisions are always on the basis of the matter submitted.

According to Pakistan the question raised in 1905 and decided in 1914 related to the portion of land to the north and west of Khori Creek in relation to the boundary between Jati Taluka and Kutch along that creek. According to Pakistan the boundary between Kutch and Sind was in three portions – the Rann boundary between Thar Parkar and Kutch, the longitudinal land boundary between Mahomed Khan's Tanda and Sayra along the Khori River, south of Sindri (to the north of which the southern tip of the jutting triangle of Thar Parkar met the northern tip of Sayra) and the boundary along the Khori Creek between Jati and Kutch. The events of 1905–14 had no relationship to the Rann boundary between Thar Parkar and Kutch, nor to the longitudinal land boundary between Mahomed Khan's Tanda and Sayra. They related only to a claim of the Rao to the lands to the north and west of Khori Creek to an indefinite extent. The fact that some officials on the Sind side were under the mistaken impression that the vertical line existed since 1837, apart from being incorrect, is immaterial.

India replies as follows:

The Resolution was in the nature of a compromise, an agreement between two parties, whereby the purple line was recognised to be the basis of the agreement. The Maharao said: "Well, here is the line, it has been there, but in one respect I want a rectification – a rectification of the boundary – the boundary between Sind and Kutch. This part I want rectified, you have outstepped the mark and occupied too much." The Kutch Darbar asked for "rectification" of the boundary and on the compromise being arrived at, a particular area was "surrendered". What it means is, "I have something wrongly; I give it up." It was never considered that British territory was being ceded or transferred.

Pakistan has hinted that factually the British were wrong – in other words they accepted as good a claim which was in fact bad and should not have been accepted. It is too late in the day to go back on it. The Tribunal will not go into all evidence and say, they should not have done it, they were wrong. In fact one of the documents (Ind. Doc. A-31) implies that surrendering a part was much more advantageous to the British than letting it go to formal arbitration, that more was obtained by this compromise than would otherwise have been obtained. The British would not have given up an inch of British territory if

it was admittedly British. The evidence was put before them on both sides and they came to the conclusion on the basis of whatever material was with them that they were wrongly in occupation of this part and they compromised and gave it up.

Pakistan has said at one stage that by advancing a claim to some territory, the Rao gave up any claim to the rest of the Rann. There was no question of giving up a claim; there was no claim for him to make in view of the accepted boundary. He had never been told that the British claimed anything. There was a boundary in respect of which the Rao claimed that a part was wrong. The inference to be drawn is that so far as the rest goes that boundary, which was the boundary according to statements made by the British, must be deemed to have been accepted. There was no question of giving up a claim or making a claim. The very basis of the whole episode is the existence of a boundary between Sind and Kutch, a boundary all the way between Sind and Kutch, and the fact that the Rao asked that a part of it be rectified.

Pakistan has said that it does not really question the deal because it had been acted upon. A part of the country towards the north, above the 24th parallel, is questioned although what is below the 24th parallel is not questioned. The two parties arrived at a solemn agreement whereby a certain line was drawn and laid down as the boundary between Sind and Kutch and this settled a dispute – there was no dispute except as regards this portion.

It is argued by Pakistan that the purple line is referred to in the Resolution as the Sind boundary and not as the Sind–Kutch boundary and that the boundary was between one part of Sind and the Rann or one part of Sind and another part of Sind. In fact when the Resolution speaks of the Sind boundary it means the boundary between Sind and Kutch; what was in issue was the rectification of the boundary between Sind and Kutch. The Rao showed the boundary between Sind and Kutch in the map by a purple line and asked for rectification of a part of it.

It is said that a copy of the Resolution was sent to the Collector of Karachi only and not to the Collectors of other districts. Two copies were sent to the Collector of Customs in Sind and to the Superintendent of Land Records in Sind, who was asked to arrange to show the revised boundaries in all Sind maps. Obviously the reference must be to the whole boundary between the two States. It also presupposes that there is a boundary of which a particular part had been rectified or revised. A copy was sent to the Collector of Karachi as he was the Collector concerned with the particular dispute.

The supposition that there were two disputes is false; regarding the rest of the boundary there was no dispute. There was a claim made for rectification on the basis that the whole of the boundary which was on the map relied upon by the Rao was the boundary but a part of it required to be rectified. There was no claim of Sind of any kind and there was never any dispute as to the rest of the boundary. At some stage some officials at the lower level said the boundary was in the Rann or in the middle of the Rann but there had been no intimation to Kutch that Britain claimed that the whole of the Rann was not Kutch. Had that been done, there could have been a dispute and the Rao might either have

objected or acquiesced in the claim of Britain. The doubts or opinions expressed by lower officials were not elevated to an inter-State dispute.

The Government must have considered the matter carefully; had there been any flaw in the sense that this was not the boundary between Sind and Kutch that would have been noticed. It was not a matter of just one person doing something; the papers passed through many hands. There cannot then be any question of confusion. If the British Government and the Rao both agreed to treat the purple line as a boundary between their States, it cannot now be said that they must have made some mistake.

One cannot accept the agreement in one part and not accept it in another part. The parties arrived at the agreement as one whole by way of a compromise and it cannot be split up. Pakistan has argued that, supposing there were admission or recognition that the purple line which runs along the top of the Rann was in fact a boundary of Sind, then one cannot necessarily draw the inference that what was south of that was Kutch. Throughout, however, the thinking has been on the Sind–Kutch boundary. According to India, it was an accepted basis.

The British should have made a reservation if they were really conscious that half the Rann belonged to them and made it clear to the Rao at that stage. They actually accepted the boundary as it was and kept on confirming it.

The question whether the adjustment of the boundary was minor or major is a relative concept. The Government of Bombay thought the matter to be a trivial one and that the land was of little value.

Pakistan attempts to deny that the vertical line was the boundary between Sind and Kutch because in this respect there was no question of burden of proof on India. The burden surely is on the party which wants to do away with this vertical line.

Assuming the Resolution to be not strictly legal in the sense that it never went to the Secretary of State, what could the Tribunal say? A thing has been done and it has been accepted. It has been acted upon. It has been acquiesced in by the Governments concerned. It is conceded that in any event if it is a minor adjustment of a boundary it is something which could be done at the level of the Government of India. Apparently it was considered that this was a minor matter. It went to the Secretary of State subsequently in other ways; it has been acquiesced in and accepted. If so, no question arises about the supposed illegality or invalidity under law of this compromise. Apparently the Government of India did not think it was a matter which required the sanction of the Secretary of State and the Secretary of State – with subsequent knowledge of what went on – never objected to it.

In short, India submits that the determination of the Paramount Power embodied in the Resolution of 24 February 1914 presupposed and was based on the existence of an established boundary running roughly along the northern edge of the Rann of Kutch. In any view of the matter, the said boundary was acknowledged and accepted, though not formally determined by the Resolution. India adds that in its submission, an established, traditional, accepted, logically recognised, or settled boundary could exist, and be of such a character that it

should be deemed to be binding in the present case, even though it had neither been the subject of regulation in a treaty, nor been formally determined by the Paramount Power.

Pakistan submits that India has tried to justify the Resolution as belonging to the category of minor adjustments but if there was a question of transfer of any British territory it had to go to the Secretary of State at least, if not to Parliament, and if there was a question of determination as to whether some territory should be ceded, it had to be put directly to the Secretary of State before the question of cession could arise. A minor boundary adjustment means merely a give-and-take; but here is a case of surrender or cession of 550 square miles of territory without anything else in return. This is not a boundary adjustment and the determination of the status of the territory as State territory or the transfer of British territory could certainly not be done by the Government of India.

The Resolution distinguishes the Sind boundary from the Sind–Kutch boundary. It merely applies to that which is the Sind–Kutch boundary – which is the blue dotted line. The Sind boundary is merely mentioned as the terminal point of the blue dotted line.

Pakistan points out that the map selected by the Rao was a map which marked the Sind boundary separately and the Kutch boundary separately by two ribands of different colours. There was no Sind–Kutch conterminous boundary marked on that map although at that time there did exist the Survey of India maps, which marked a conterminous boundary.

The Rao selected a map with double ribands – ribands on both sides; i.e., on the Sind side as well as on the Kutch side. It was admitted by both Parties that the Resolution did not determine the rights in the Rann. If they had been previously settled, as India claims, the Resolution was not required. If they had not been settled previously, then the Resolution did not affect the unsettled state in the Rann. Thus the Resolution is irrelevant for the purposes of determining the rights in the Rann or the alignment of the boundary. It only decides one specific and special matter, namely, the area that was delineated by the Rao. The ultimate decision was that he could have approximately half of it just to the south of the 24th parallel.

Pakistan submits that although an erroneous conclusion was drawn factually in the Resolution, it is a precedent upon which Pakistan relies. The approach of the Government was that since the Rao could prove that he had exercised vahivat over the relevant territory, it was found to be Kutch territory in spite of the fact that it had been shown differently on the maps. Hence, the maps yielded to the exercise of vahivat. Pakistan adds that it is on the very maps which were thus ignored by the Government in assessing the claim of the Rao that India relies in the present case. (Ind. Map B-44, the Resolution Map.)

(*b*) *The Erection of Pillars*

It is common ground that while accepting the compromise the Rao had suggested that "with a view to arrive at a complete settlement of the pending boundary question, that when the boundary is being demarcated, it would be desirable to erect at the same time boundary marks along the purple line on

the map". (Ind. Doc. A-32.) The Government of Bombay wrote to the Political Agent, Kutch, that he should "inform the Cutch Darbar that the Commissioner in Sind has issued orders for the fixing of the boundary pillars all along the boundary of the triangle on its southern and eastern sides, i.e., along the dotted blue line on the map, and also along the purple line". (Ind. Doc. AA-11.)

The Political Agent, Kutch, informed the Rao accordingly (Ind. Doc. AA-11). The pillars – 140 in number – were supplied by the Kutch Darbar. They were erected at the rate of three per mile along the blue dotted line as well as along the vertical line from the junction of the blue dotted line and the vertical line up to the trijunction. Though the Resolution was passed in 1914, the pillars were erected in 1924.

Pakistan has made several comments.

Firstly, it was said that in asking for erection of pillars along the blue dotted line and the purple line, the Rao did not use "straight language" in his letter. He slipped in a suggestion that pillars be also fixed along the purple line. At this time the Maharao had said, still maintaining the distinction between the two lines, "when the boundary is being demarcated, it would be desirable to erect at the same time boundary marks along the purple line on the map ...". (Ind. Doc. A-32.) He did not like to raise the question properly but at the same time, if something could be done which would be capable of an interpretation favourable to him later, he was willing to have it and he put in "a rather curiously worded letter".

Secondly, the erection of pillars was not covered by the Resolution and went beyond the Resolution. No reference was made to the Government of India when there was also a proposal that "some innocent little act" be performed which would later be interpreted as meaning much more than what was in the Resolution. There was no clearance from the Government of India for placing marks that might convert the purple line into a boundary between Sind and Kutch. The Sind authorities agreed to the erection of the pillars, thinking that they were implementing the Resolution. There was an excess of authority, unless of course they meant something else by the erection of those pillars. The act, if interpreted in the manner in which India wishes it to be interpreted, would be clearly *ultra vires*, unauthorised, without effect and completely invalid.

Thirdly, it was contended that 140 pillars were paid for and actually erected, seven of them having been erected along the purple line to the south of the junction of the blue dotted line and the purple line.

In support of this, Pakistan has produced Pakistan Map 51, in which these seven pillars are said to be shown in addition to the remaining 133 pillars.

Finally Pakistan said that the purple line is the boundary between Sind and the Rann and not Sind and Kutch. It was contended that in the west the distinction between what was the Rann and what was not the Rann, was not clear and almost arbitrary. Therefore, what was being regarded as the western limit of the Rann might be marked with something a little more permanent. If the Resolution Map is looked upon as marking the limits of the Rann by the purple and yellow lines, it makes better sense.

India refutes the argument of Pakistan that, in asking for the fixation of pillars, the Rao did not use straight language but slipped in a suggestion that pillars be also fixed along the purple line. India says that there was nothing wrong, suspicious, underhand or dishonest about making the request. Since, instead of the green line, the boundary was set along the blue dotted line and the vertical line, the Rao was justified in asking for demarcation of this rectified boundary line. The fixation of pillars was effected ten years later. The correspondence was between the Government of Bombay, the Commissioner in Sind, etc. If there was anything sly or underhand, if the demarcation of the vertical line was not strictly involved in the matter, within that period of time the British Government would have woken up and would not have agreed to a demarcation along the vertical line.

In the matter of erecting pillars, India quotes abundantly from official correspondence to point out that all concerned treated both the blue dotted line and the vertical purple line as the Sind–Kutch boundary. The correspondence with a letter from Pottinger, Political Agent, Kutch, to the Commissioner in Sind dated 25 July 1916, containing the Rao's request that "a representative of the Cutch Darbar may be permitted to accompany the party detailed for the fixing of boundary pillars on the new Cutch–Sind boundary, i.e. along the dotted blue line on the map, and also along the purple line from where it joins the dotted blue line to the trijunction of the Karachi and Hyderabad districts and the Runn of Cutch". (Ind. Doc. TA 16.) The same language is used in the reply of the Commissioner in Sind. A letter from the Dewan to Pottinger, dated 13 March 1920, speaks of stones for pillars to be provided from Kutch and mentions that "69 or 70 boundary pillars will be required on each of the two sides of the triangle and their total number will be about 140". (Ind. Doc. AAA-3.)

An Order of the Revenue Department of the Government of Bombay, dated 28 September 1920, is headed: "Grant for fixing boundary marks in the rectified boundary between the Kutch State and the British territory in the Karachi District" (Ind. Doc. TA 16). A letter of 16 October 1920 from the Collector of Karachi to the Assistant Commissioner in Sind refers to the same grant as related to "fixing boundary marks in the rectified boundary between the Kutch State and British Territory in this District ...". (*Ibid.*)

In another letter, dated 16 February 1923, the Superintendent, Land Records, Sind, wrote to the Collector of Karachi about the difficulty represented by the exact location of the northern-most end of the vertical purple line, stating:

> "It is doubtful if the trijunction marks of the Karachi and Hyderabad districts and the Rann of Cutch do exist now on the ground. This must be ascertained by inquiry from the Mukhtiarkar of Badin who should be required to report after inspection of the spot. If they do not exist, which probably is the case, steps will have to be taken to fix the spot in reference to the old survey records before the Eastern boundary of taluka Jati on the Cutch border referred to in the Commissioner of Sind's No. 201 dated the 28th June 1916 can be demarcated." (*Ibid.*)

Further, in a Memorandum of the Commissioner in Sind, dated 18 September 1923, addressed to the Government of Bombay, Revenue Department, the Commissioner informed the Government that "the work of demarcation of the Sind–Cutch boundary will be started on the 1st November 1923 if the tract is

free from water". (*Ibid.*) The Commissioner asked for grants to cover the expense, and the Government granted 2,500 Rupees "to meet the additional expenditure in connection with the rectification of the Sind–Cutch boundary".

The Superintendent of Land Records in Sind, in a letter dated 12 July 1923, wrote to the Collector of Karachi:

> "... the work of demarcation of the Sind–Cutch boundary will be started on the 1st November 1923. It will commence from the top of Sir Creek at the point (A) where the green line from the mouth at the top of the creek joins the blue dotted line, *vide* kindly the map attached. The boundary due east shown in the blue dotted line will at first be demarcated and next 'the Sind boundary' marked in purple on the map running north to the trijunction of Jati and Badin talukas and the Cutch State".

The expression "the Sind boundary" is put in inverted commas because it is part of a quotation from the Resolution of 1914, and is used to specify which part of the boundary is meant. The Secretary to the Government of Bombay wrote on 29 January 1924 that "the Government in Council desires that all the work connected with the demarcation of the Sind–Cutch boundary should be completed as soon as possible, and in any event before the end of the present touring season...". (Ind. Doc. TA 16.) At the end of the operation, the Commissioner in Sind reported to the Secretary to Government, Revenue Department, Bombay, on 28 February 1924, about "the completion of the survey of the Sind–Cutch boundary" (Ind. Doc. TA 17) and forwarded, to this effect, a Report from the Superintendent, Land Records in Sind to the Collector of Karachi, dated 10 January 1924, which stated, *i.a.*:

> "... my survey party consisting of two Surveyors, two peons and six khalasis returned from the Runn of Cutch after completing the survey of the Sind–Cutch boundary ...
>
> "The total length surveyed amounts to 45 miles, of which 22 miles are comprised in the southern lines and 23 miles in the eastern line joining the trijunction of Badin and Jati talukas and the Cutch territory in the North." (*Ibid.*)

The expenses of the erection of the pillars were shared equally between Sind and Kutch, as appears from Pakistan Document B.116, and from Indian Document TA 16 and TA 17. It was argued that the Maharao was not interested in putting pillars or incurring any expense for the purpose of marking a boundary between one part of Sind and another part of Sind. India agrees that 140 pillars were ordered and paid for but contends that the requirement of 140 pillars was merely an estimate. (Ind. Doc. AAA-3.) Actually 134 pillars were used, as indicated in Indian Document TA 18. The Superintendent of Land Records wrote to the Collector of Karachi that the total length surveyed for the purpose of erection of pillars amounted to 45 miles, of which 22 miles were comprised in the southern line and 23 miles in the eastern line – indicating that the purple line below the blue dotted line was not surveyed (Ind. Doc. TA 17.)

As regards Pakistan Map 51, on which reliance is placed by Pakistan to show that seven pillars were fixed along the purple line below the blue dotted line, India said that it was not sure that the map shows that such pillars were fixed. The map is a reproduction of 1947. If the marks below the blue dotted line are assumed to be pillars, they might be thakbust pillars which were in existence. Unlike the pillars placed as a part of the 1924 scheme, they are not three to a mile; two of them are put down at the corner and two are presumably put in

a further corner but are not actually down. Apart from that, the Superintendent of Land Records had clearly stated that only 134 pillars were in fact fixed.

The Government of India knew that the rectification was a rectification of the Kutch–Sind boundary and the Government of Bombay was justified in implementing the Resolution without further reference to the Government of India.

Pakistan, while accepting the Indian statement that no pillars now exist below the Western Terminus, reiterates that 140 pillars were erected. Pakistan Map 51 was prepared after an actual survey and the surveyor put down on the map what he found on the ground. He could not show imaginary pillars. Pakistan repeats that the setting of pillars on the vertical line went beyond the Resolution. Pakistan also adds that the erection of those pillars had no effect on the size of Kutch which did not increase after 1819. Independent of the fact that they are unauthorised, they were inconsequential and ineffective.

Pakistan concludes:

The Government of India in fact had no power except to make minor boundary adjustments and what was done by the 1914 Resolution was not a minor boundary adjustment. Even the Government of India sanctioned only the blue dotted line. The Commissioner in Sind accepted only the blue dotted line. The Resolution therefore was confined to the blue dotted line. If any portion of the vertical line was marked by pillars as a boundary, then it would be beyond the authority of the Resolution.

The Resolution Map forms part of Map A in Volume III.[1]

4. *The Creation of Sind as a Governor's Province in 1935*

After its conquest in 1843, Sind was administered as a separate unit under a Governor. In 1847, however, Sind was attached to the Bombay Presidency and was made a Division of that Presidency. The status of Sind as a Division of the Bombay Presidency continued till 1 April 1936, on which date it was created a Governor's Province under the Government of India Act, 1935.

Section 46 (1) of the Government of India Act, 1935, sets out the various Governor's Provinces. Section 289 (1) (*a*) states that "Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind" as from a date later fixed to be 1 April 1936. Section 289 (2) of the Act, 1935, also provides for an Order in Council (the Government of India (Constitution of Sind) Order, 1936), *inter alia* to define the boundaries of the Province of Sind.

It appears that the Secretary of State had sent to the Government of India a draft of the said Order in Council which provided for a Schedule containing the definition of the boundaries of Sind. The Reforms Office of the Government of India, which was set up to make all arrangements for bringing the Government of India Act, 1935, into force, undertook the task of framing a definition of the boundaries of the Province of Sind for inclusion in the Schedule

[1] See note on page 11.

to the Order in Council. Accordingly, it asked the Surveyor-General of India to prepare a draft of the Schedule setting out the boundaries of the Province of Sind and also an Index Map showing these boundaries. The draft and the Index Map prepared by the Surveyor-General of India were forwarded by the Reforms Office to the Government of Bombay for its comments by a letter dated 31 October 1935 (Ind. Doc. A-35). A copy of the Index Map is submitted as Indian Map B-45.

The Government of Bombay sent the draft and the Schedule as well as a copy of the Index Map to the Commissioner in Sind for his comments, and the Commissioner in Sind, in turn, called for the views of the Superintendent of Survey and Land Records in Sind. The Superintendent of Survey and Land Records in Sind suggested some minor amendments in the draft, which are not relevant for the present purpose. The Commissioner in Sind considered the amendments suggested by the Superintendent of Survey and Land Records, made some further corrections in the draft and on 12 December 1935 forwarded to the Government of India, along with the Index Map, a revised draft, incorporating the corrections indicated by the Superintendent of Survey and Land Records and his own corrections. The letter of the Superintendent of Survey and Land Records to the Commissioner in Sind and the endorsement of the Commissioner in Sind thereon and the revised draft are included in Indian Document A-35. The Government of Bombay, by a letter dated 9 December 1935, sent its comments to the Government of India, in which it stated that the description of the boundaries of the new Province of Sind as given in the draft of the First Schedule to the Sind Order in Council had been found to agree with the maps maintained in the Head Records Office, Sind, except in the particulars mentioned by the Commissioner in Sind. It also sent the revised draft incorporating the various alterations and a few other corrections of its own. The Index Map was also returned with the observation that it did not show the new Dadu District and the other changes consequent upon its formation, adding that this did not affect the draft, but the discrepancy was pointed out so that the necessary correction might be made when the map was reprinted. The letter of the Government of Bombay and its enclosure are included in Indian Document A-36.

Meanwhile the Secretary of State had sent a revised draft of the Sind Order in Council, which indicated that the Order contemplated no Schedule of boundaries. It appears that the draft merely said that "Sind means the territory known at the date of this Order as the Division of Sind". The Government of India, while agreeing with the Secretary of State that the Schedule of definition of the boundaries of Sind was unnecessary, pointed out that Section 289 (2) of the Government of India Act required definition of boundaries and hence suggested that the words "and the boundaries of the said Division shall be the boundaries of the Province of Sind" be added to the draft prepared by the Secretary of State. A telegram was accordingly sent on 3 December 1935 to the Secretary of State, which said:

> "We understand there is no existing notification of boundaries of Sind Division, but simple reference to existing division may be adequate since absence of notification has not prejudiced jurisdiction of Commissioner in Sind." (Pak. Doc. B.118.)

On receipt of the reply of the Government of Bombay to its letter transmitting the draft Schedule of the definition of the Province of Sind and the Index Map, the Government of India recorded a note setting out the intermediate developments as above and observed:

> "It does not, therefore, seem worthwhile to pursue further the question of the definition of the boundaries of the province. A copy of the Bombay Government's letter and of its enclosure, together with a copy of this note, may, however, be forwarded to the Surveyor-General, for his information." (Ind. Doc. A-36.)

The draft definition of the boundary of the Province of Sind, as proposed by the Government of India, describes the boundary of Sind, so far as is relevant for the present case, from the north-west corner of Jodhpur State as follows:

> "Thence southwards it follows the western boundary of this State to its junction with the States of the Western India Agency on the northern limit of the RANN of CUTCH. Thence the province boundary follows the northern boundary of the STATES of the WESTERN INDIA AGENCY westwards until it again meets the Arabian Sea."

The Index Map, Indian Map B-45, shows the boundary of the Province of Sind with a green line. The southern boundary of the province is indicated roughly as claimed by India.

The above facts are not disputed but they are differently interpreted by the Parties.

India attaches great importance to the boundaries of Sind as described in the draft Schedule and as depicted in the Index Map since it is common ground that what was the territory of the Province of Sind under the Government of India Act, 1935, was the territory of that province at the time of the passing of the Indian Independence Act. The creation of Sind as a Governor's Province was, according to India, a very important occasion on which its boundaries were scrutinised; if there had been any doubt about these boundaries this would have been pointed out at that time.

According to India, both the description in the draft Schedule and the depiction in the Index Map tally with its claim. The draft Schedule and the Index Map were prepared by the Surveyor-General of India, "the man who has the maps and records and who knows how to read the maps" (Verbatim Records, p. 11623). The Government of India approved them, the Government of Bombay, the Commissioner in Sind and the Superintendent of Survey and Land Records in Sind did not object to them except as regards minor points which are not relevant for this case; the views of everybody concerned were invited, the mind was applied to the question, but no one questioned the accuracy, except as to some enclaves. Finally, it was decided that the boundaries of Sind should not be described in detail and a shorter description was substituted but that does not detract from the fact that the Schedule as well as the Index Map were not taken exception to at all. The shorter description was adopted because the territory was well defined and it was considered unnecessary to have a Schedule and a map. The Index Map used by the Government of India, the Government of Bombay and the Sind authorities to depict the boundary of Sind, and the definition of the boundary of Sind as proposed by the Government of India and slightly modified by the Government of Bomday in

consultation with the Sind authorities, have the force of an official description of the territory of Sind and are binding on Pakistan.

Pakistan contends that the description of the boundaries of Sind in the draft Schedule does not necessarily corroborate the southern boundary of Sind as claimed by India. The statement in the description that "the Province boundary follows the northern boundary of the States of Western India Agency westwards until it again meets the Arabian Sea" merely means that there is a conterminous boundary between the States of Western India and Sind; that conterminous boundary may be anywhere – it may follow the northern edge of the Rann, the middle of the Rann or the southern edge of the Rann.

If emphasis is laid on the word "westwards", the boundary must be direct west and this could not be, if as India claims, the boundary runs southwards along the vertical straight line shown in the Index Map; the boundary then can only be west and south along the northern boundary of the States of Western India. If the northern boundary of the States of Western India were as shown on the Pakistan Claim Map, that could fit in with the description.

The conterminous boundary between the two entities, is, thus, "undefined and undetermined" by the description.

While agreeing that the description read with the Index Map would support India's argument, Pakistan contends that the Index Map was construed from and compared with the maps of the Survey of India; and if those maps were not accurate, the whole structure which is sought to be built upon the Index Map would fall. The only verification that was made was whether the Index Map agreed with the existing maps; there was no independent additional verification of what the boundaries were.

The Government of India Act, 1935, also set up a new Governor's Province of Orissa (*vide* Section 46 (1)), and under Section 289 (2) an Order in Council had to define the boundaries of both Sind and Orissa; while the Order in Council in respect of Orissa (called the Government of India (Constitution of Orissa) Order, 1936) contained a full Schedule defining the boundaries of said province, no such Schedule was attached in the case of Sind and the boundaries of Sind were simply stated to be the boundaries of the Division of Sind. The relevant file in the India Office is not to be found. But the Secretary of State considered that a Schedule of boundaries was unnecessary in the case of Sind although the Government of India Act required that the Order in Council "shall define the boundaries of... Sind and Orissa". The avoidance of a statutory obligation is explicable only on the assumption that, since the jurisdiction of the Commissioner in Sind extended further than shown on certain maps, it was considered advisable not to have a definition that might be inconsistent with the existing position.

The "thorny" question of the boundaries had previously been shelved and because of it, notification of the boundaries of Sind was avoided. In the absence of an earlier notification, the boundary had to be defined either by issue of a notification at that stage or in some other way. Pakistan points out that the Government of India stated that the absence of notification had not prejudiced

the jurisdiction of the Commissioner in Sind. The Commissioner had been exercising jurisdiction and no one had challenged the exercise of his jurisdiction because of the absence of the notification. If that situation had gone on in the past, it could continue in the future and the Government would not take the step of defining that which had so long not been defined. Hence the definition was adopted in terms of jurisdiction.

In the circumstances, Pakistan submits, the events are not only not evidence for India but are evidence in support of the contention of Pakistan that the southern boundary of Sind had not been defined.

Pakistan also deals with the legal aspect of the situation. It states that the provisions of legal power to alter and fix boundaries of provinces in force at the time were contained in Section 60 of the Government of India Act, 1915. The boundaries of a province of British India could be altered only by the Governor-General in Council by notification and territory could be transferred to an Indian State only with the previous sanction of the Secretary of State. Pakistan points out that it is not correct to say that any Index Map was used by the Government of India or anyone else. The Surveyor-General was asked to make a schedule of the boundary. He tried to describe in words what he found marked on some of his maps. If the maps were inaccurate, their description in words does not remove their inaccuracy. Since the whole matter was dropped, there was no question of any binding obligation arising from it. On the contrary, the definition given in the Government of India (Constitution of Sind Order), 1936 takes the boundary of Sind back to the time of the Amirs.

India replies thus to the various points made by Pakistan: by using the word "westward" in the description in the draft Schedule, the direction is shown and, having turned westwards, the boundary is to follow the northern boundary of the States of Western India; it was not considered necessary to say that the boundary moves a little to the west, then south, then a little west, then up, then south-east, then again west, then south, then west and so on. After moving westwards, the boundary was known and was to follow the northern edge of the Western India States to the sea. The description does not purport to describe every inch of the line; it gives a general direction. The word "westwards" does not mean that the line runs directly westwards to the sea. If the line were to come down to fit the claim line of Pakistan, it would first have to come down south-eastwards and then turn westwards. If the line were to follow the southern edge of the Rann, which Pakistan suggests is a conceivable interpretation of the description, the description would have said "thereafter south-easterly until it joins the mainland of Kutch and thereafter westwards along the northern edge of the mainland of Kutch". There is thus no defect in the description itself and the description and the map together make the position perfectly clear.

As regards verification, the Index Map was accepted as correct by the Commissioner in Sind, the Government of Bombay, and the Government of India; it came with a description from the Surveyor-General, "the Government of India's supreme repository not only of maps but of information relating to boundaries"; the Superintendent of Land Records, Sind, confirmed it. There was a whole series of maps and there was the Resolution of 1914. What other verification could there be?

As regards the absence of a Schedule of boundaries for Sind and the inclusion of a Schedule of boundaries for Orissa in their respective Orders in Council, Sind was a well-ascertained and recognised block of land, but a complicated provision was necessary for Orissa because the new Province of Orissa was a composite province consisting of a part of the former Province of Bihar and Orissa, two bits of the Madras Presidency and a bit of the Central Provinces. In the case of Orissa, there was a question of cutting out a piece of a certain block and adding certain other things to it, but in the case of Sind, it was administered as a Division of the Bombay Presidency, totally separate, geographically detached – its limits were well known.

In support of this argument, India quotes the Debates in the House of Commons on the Sind and Orissa Orders in Council. Mr. Butler, the Under Secretary of State for India, observed:

> "Let me answer my last question: Are their technical points common to both orders or any particular points which affect Orissa in which Hon. Members might be interested? Orissa deserves a separate word, since her boundaries must be settled. Sind being an independent area her boundaries are clear, but in the case of Orissa, the Schedule describes her new boundaries. She has three parent Provinces." (Verbatim Records, pp. 11686/90.)

As regards the absence of notification, there were no notifications of boundaries of the Divisions of the Bombay Presidency – not even of the Bombay Presidency itself. They were historical boundaries accepted and recognised over the years without question. There was no question of notifying the boundaries of Sind, there had to be notification for the purpose of establishing or altering a boundary, but there was no question of altering the boundary of Sind. No legal question under the Government of India Act, 1915 accordingly arose.

A Schedule of boundaries was considered unnecessary because it was clearly thought that it would be sufficient to say that the Province of Sind should be the same as the Division of Sind since the absence of notification had not prejudiced the jurisdiction of the Commissioner in Sind. The Commissioner in Sind and his subordinates knew their jurisdiction and the limits of Sind and when in the future the Province of Sind was established the Commissioner normally would know what his jurisdiction was. There were a number of taluka maps in which the Rann had been excluded from the talukas; the revenue officers knew exactly what their jurisdiction was: they were the ones who gave information to the survey and were consulted in regards to the limits of their jurisdiction, and it was on the basis of their jurisdiction that the maps were compiled. The limits within which the Commissioner in Sind had been exercising jurisdiction were well known. Therefore, a simple reference to the existing division was considered adequate.

The definition of the boundaries might be a detailed one but, where the boundaries were well known the definition could be dispensed with. It had to be assumed that the Government did not leave the matter undefined; that is unthinkable in a documented matter of this kind. When it created a province it would certainly not leave the boundaries in a fluid state. When a phrase like "the boundaries of the Division shall be the boundaries of the Province" is used, it postulates that the boundaries are known and, as Mr. Butler quite rightly said, in the case of Sind the boundaries were clear.

There is no question of law involved. The Order in Council was made by the King, by virtue of a direction contained in an Act of Parliament. When the Act said "define the boundary", it did not necessarily mean that the boundary was to be traced inch by inch. There had to be a definition; if the definition is given in some form, the boundaries are defined. If the boundaries are said to be the same as the boundaries of the division, that is sufficient definition: a known division, a known entity, a known defined boundary. The definition complied with the Act in the minimum terms.

The fact that the draft definition was not included in the Order in Council does not detract from its value; it was prepared by the Government of India and approved by the Government of Bombay as well as the Commissioner in Sind. When it was decided not to pursue the matter further in view of the Secretary of State's decision, the correspondence was sent to the Surveyor-General for his information so that the Surveyor-General would know that the map which he sent up was a map which had been agreed to by all concerned. India states that the Western India States Agency did not take part in the preparation of the Government of India (Constitution of Sind) Order of 1936 since no change in the historical boundaries of Sind was contemplated. (Official Records, 114th Meeting, para. 5.)

Pakistan states that the draft Schedule giving the boundaries of Sind was merely a verbal translation of the depiction in the Index Map. It does not add to the map but is merely a re-statement in a different language and if the map is inaccurate, it does not carry the matter further.

When the absence of notification as to the boundaries of Sind was commented upon, a clear reference was made to the jurisdiction of the Commissioner in Sind; the real test as to what is Sind is where the Commissioner in Sind exercises jurisdiction.

Sind meant the Division of Sind, which was the Province of Sind which Napier had set up in 1843, which in turn was a territory which had been conquered from the Amirs. The definition of Sind is thus the territory over which the Amirs ruled. This test was adopted by the Rao himself. (Ind. Doc. A-31.)

The debates in Parliament are irrelevant for the purpose of finding out the meaning of the finished product – this is one thing which is established in the British legal system beyond question. The finished product says that the Province of Sind is what the division was. In the Parliamentary Debate, Mr. Butler said that "the boundaries of Sind are clear". But he did not explain which clear boundary he was thinking of. Mr. Butler said:

> "After many considerations about their [meaning Sind and Orissa] future it is legitimate to feel some satisfaction that Sind, which earlier than any part of Moslem India was established as a separate unit, should be on the high road towards responsible government as a separate part of India under the Government of India Act. It is also a legitimate source of satisfaction that the Holy land of Orissa should be about to be set up as a separate unit." (Ind. Doc. TC 46.)

He referred to Sind as the territory which "earlier than any part of Moslem India was established as a separate unit". The reference to history is clear. Mohammed Ben Kassim in the eighth century had conquered this region.

Then, through the centuries, this region emerged as a Moslem power, an integrated Moslem unit that was Sind. Butler was referring to that. He was saying that the Moslem unit was now on the road to responsible Government. Sind was that Moslem unit which was then established and the rights of the people to whom it belonged might have remained in trust with the British during the period while they were there and they were looking after it, but it could not be alienated by them. (Verbatim Records, pp. 17851, 17856.) There was no mention of Kutch or the Rann in that speech, that speech is being referred to only for the purpose of showing what Sind was, and it does not necessarily follow that that has a bearing on the Sind–Kutch boundary.

The description refers to the boundary of the Western India States Agency; the Western India States Agency was not a political unit at all and had no boundary as such. The description in the Draft Schedule constitutionally is no description at all.

CHAPTER IX: ACTS OF "JURISDICTION" IN THE NORTHERN HALF OF THE RANN

1. *The Main Submissions of the Parties*

1.01.1 This Chapter deals with arguments and evidence related to what the Parties call jurisdiction, to the extent that the material has not been deemed more appropriate for inclusion in other chapters of this Award. The Chapter also deals with such activities of private individuals as are relied upon. Some documentary evidence which is relied on both in regard to certain statements made therein concerning the alignment of the boundary, and as demonstrating exercise of authority, or the protection of the activities of private individuals, has, in order to avoid repetition, been treated in this Chapter only.

1.01.2 The Parties have referred to evidence of this nature as relating to "instances of exercise of jurisdiction", although, at times, the issue has also been discussed in the pleadings and arguments in terms of "control". The terminology employed in this Chapter will, however, except in direct quotations, largely use "jurisdiction" in its restricted sense of the extent of the authority given to, exercised or assumed by judical institutions and law enforcement agencies.

1.02.1 India submits that the Maharao of Kutch exercised authority over the Rann and that such authority was recognised by the British Government and its officials and, further, that after the setting up of the Dominions of India and Pakistan and the merger of Kutch with India, the Government of India exercised jurisdiction over the Rann.

1.02.2 All instances of exercise of authority by Kutch cited by India have been relied upon by India as evidencing existing boundaries and not as constituting an independent source of title. This submission conforms to India's position that the boundary between India and Pakistan is a well-established boundary.

1.03.1 Pakistan denies that there is any evidence of exercise of authority by Kutch in any of the bets lying to the north of the median line in the Rann; indeed, the first token of presence of the State of Kutch in modern times in the northern half of the Rann was the erection of pillars along the vertical line in 1924. Pakistan submits that Sind, at all relevant times, exercised effective and exclusive jurisdiction in, and control over, at least the northern half of the Great Rann, with the intention so to exercise jurisdiction and control, and was known so to exercise jurisdiction and control.

1.03.2 Pakistan cites an appendix to an Indian Diplomatic Note to Pakistan dated 9/11 May 1955 which contained the following passage:

> "As regards the statements made by the Government of Pakistan in sub-paragraphs (iii) and (iv) of paragraph 4 of their Note, any action taken by the Sind authorities in the area of the Rann of Kutch below Rahimki Bazar, where they had no jurisdiction, without the knowledge or the agreement of the Kutch Darbar, could have no effect whatsoever on the rights of the Kutch Darbar."

This statement is relied upon by Pakistan as an admission on the part of India which demonstrates that Kutch authorities were not in control of the "area below Rahimki Bazar" and that the administration in Sind was in a position to do in that area what it pleased.

1.03.3 In Pakistan's submission, the instances of exercise of jurisdiction relied upon by Pakistan, and related to the period before 15 August 1947, did not constitute independent sources of title, they were merely evidence of existing territorial rights. If the Tribunal, however, contrary to the view of Pakistan, came to the conclusion that the Rann of Kutch was "no man's land", then these instances ought to be treated as an independent source of title and they would operate to confer title when no higher source of title in anyone else was available to override it.

1.04 India argues that the instances relied upon by Pakistan do not establish or amount to exercise of authority by Sind and that they do not at any rate constitute continuous and effective exercise of jurisdiction or control over any part of the Rann so as to be evidence in law to establish that the limit of the territory of Sind lay in the middle of the Great Rann or to confer title on Sind to any part of the Great Rann. India contends that the acts of jurisdiction relied upon by Pakistan are in their intrinsic nature trifling. Apart from that, they have no significance of their own and they have to be reconciled with the statements of higher authorities – the Government of Bombay, the Government of India, the Secretary of State – which acknowledge the right of Kutch over the disputed area. The acts are done for the preservation of peace and order or the preservation of the customs income, for the prevention of smuggling and for the convenience of the people, to which Kutch, as a vassal State, could not object.

Pakistan replies that the acts of jurisdiction of which evidence has been given are the only kinds of acts with which the nature of the area is compatible. What is significant is that Kutch has not done even those "trivial" acts. Pakistan further points out that customs jurisdiction and criminal jurisdiction were exercised under certain enactments which were applicable only to territory treated as British India, which in the present case must mean Sind. Pakistan further points out that, if there is a divergence between statements made in Administration Reports (which as a category were never even referred to in boundary disputes) and performance of actual functions on the ground, it would evidently be the deeds that would override the words.

1.05.1 India, in its Memorial, placed reliance on instances of display of authority by Kutch and India during a period of time up to 1964,

while pleading in its Counter-Memorial that those instances cited by Pakistan which "are subsequent to 18 July 1947 ... are not relevent". In oral argument, India submitted that it attributed little value to instances of exercise of jurisdiction subsequent to 14 August 1947 relied on by either Party, and that these instances could not in any event represent anything more than subsequent evidence of the boundaries conceived by the Parties as existing on the eve of Independence. Instances relating to the period after Pakistan had raised the dispute are not entitled to any weight.

1.05.2 Pakistan maintains that instances of exercise of authority and jurisdiction subsequent to 18 July 1947 are relevent. Pakistan submits that all such instances – demonstrating continuous, undisturbed and peaceful display of State functions – relating to the period between 15 August 1947 and 1956 which are relied upon by Pakistan constitute an independent source of title, while at the same time representing evidence of an extension in time of a previous position which at all times excluded possession and control by Kutch. Pakistan further submits that the period of nine years (1947 to 1956) by itself might not appear to be long enough, but in an area of this kind, where Jacob found in the case of Keswala Bet that three years' grazing rights conferred title, nine years' continuous peaceful exercise of jurisdiction is a period long enough to confer title. Pakistan points out that it is significant that India has cited no instance of exercise of authority before 1952 and further contends that the instances relied upon by India relating to the years 1952 to 1956 are confined to alleged violations of the very border which is in dispute while those relating to years subsequent to 1956 are also subsequent to a change in the *status quo* during the pendency of the present dispute.

1.05.3 In regard to the exercise of authority and jurisdiction between 15 August 1947 and 4 May 1948, Pakistan argues that, as, in its submission, the claimed accession of Kutch to India on 11 August 1947 is invalid, India acquired from Kutch only the territory that Kutch legitimately had on the day of its merger with India on 4 May 1948. No claim, it is submitted by Pakistan, could survive the independent exercise of State authority by Pakistan over the area in dispute and any claim by Kutch would thus not be alive on 4 May 1948 to be acquired by India.

2. *Settlements of Sind Purportedly Situated Outside the Boundary Claimed by India*

2.01.1 Pakistan produces in evidence extracts from registers containing 846 entries for the years 1864–72, which in its submission show cultivation on the eastern side of the Khori River by inhabitants of Sind on the Diplo portion of "Darya-i-Kharo". In Pakistan's submission, "Darya-i-Kharo" was situated in the vicinity of an extension of the Puran River called "Kharo Durya" as marked on Indian Map B-2, Sheet 92, south of the boundary line appearing thereon.

It may be remarked that Mr. Fielding wrote, in 1882–83, that:

> "Prior to the earthquake [of 1819], the very considerable extent of country lying between Raham-ki-Bazar and Allah Bund, was covered with rice-field watered by the Indus, and the remains of an old canal crossing the road leading from Luna in Cutch to Raham-ki-Bazar in Sind bear silent witness to bygone irrigation. The extent of the ruins of Kanjorkot and Wogo-ja-kot plainly show that they must have been towns of considerable size. The whole of this strip of land is now a salt waste, producing a coarse grass on which the cattle and camels of Sind graze." (Pak. Doc. A.19.)

2.01.2 India submits that the entries in question indicate a maximum of 270 fields under cultivation in 1867, 1868 and 1869. In 1867–68, the marking out of the boundaries was made in the course of Macdonald's Survey. In India's submission, it is inconceivable that an area of this size could have lain just outside the surveyed limits and could have been omitted on the survey maps which, even in the submission of Pakistan, were to include all cultivated land. The entries refer to a locality, Darya Kharo (not a river) in Deh Rahimki; the lands were held by Zamindars, they were cultivated by different tenants, they yielded land revenue, the local officials in charge would be conversant with these lands and it is inconceivable that the lands were not surveyed by Macdonald, they must have been included in the survey and must be somewhere on the south-western extremity of Rahim ki Bazar. Darya Kharo was a canal, which may have taken its name from the river Kharo Durya; Kharo Durya is salt water and there could have been no canal in the Rann feeding salt water to agricultural land.

2.02.1 Pakistan submits in evidence two documents, being extracts from a census of Diplo Taluka in 1910 and 1921, respectively, referring to houses in "Shakurji Kandi". In Pakistan's submission, a village by that name was situated on the edge of the Lake Shakur as shown on Indian Map B-11 (cf. Pak. Map 91); the instance therefore is relied upon as showing that Diplo Taluka transcended the boundary line shown on the survey maps.

2.02.2 India submits that the entries in the documents relied upon by Pakistan relate to a different place and that "Shakurji Kandi" could not be situated where Pakistan claims that it was. India points out that all the cases mentioned in these extracts are within Deh Liari and they are to be identified in a map of Taluka Diplo, Indian Map B-23, and Shakurji Kandi is probably Shakurji Miyan shown in that map. Shakurji Kandi is said to be situated on Lake Shakur. Shakur appearing in Indian Map B-11 is shown as a salt marsh and not as a lake or a tank. A village with a number of houses could not have been left out of the survey. Shakur in Indian Map B-11 cannot be identified with Shakurji Kandi. India agrees, however, that the place indicated as "Shakur" on Indian Map B-11 with symbols for houses would be outside the boundary claimed by India. Pakistan admits that no ruins – except those of an abandoned customs house – now exist at Shakur.

2.02.3 Pakistan submits three documents for the years 1877, 1878 and

1924–25 showning respectively Vighokot, Vighokot and Allah Bund, and "Kanjikot" and "Wijokot" included in Diplo Taluka. Pakistan also submits a document of 1892 which shows Gainda Bet as a camping place in Diplo.

India points out that only a few years before, the whole of Sind was systematically surveyed with the aid of local officers and local evidence and the maps prepared on the basis of this survey do not show Vighokot or Allah Bund as being within the jurisdiction of the Thar Parkar District, let alone the Diplo Taluka. They are also not shown within the Diplo Taluka in the map of that Taluka compiled in 1900. Apart from that, the statements made in these documents cannot be regarded as instances of exercise of jursidiction by the Sind authorities. One of the documents relied upon by Pakistan refers to a list containing Kanjarkot and Vighokot, which are described as mounds of earth and pieces of bricks located in the Desert of Kutch. This does not mean that these two sites were in Diplo Taluka as the list is of remains in and round about Diplo Taluka. It is significant to note that it is stated that these sites are located in the Desert of Kutch. (They cannot be in Deh Liari as suggested since Liari is far away from these places and Rahim ki Bazar intervenes between them.) As regards the camping places at Gainda Bet, not only Gainda Bet but also Naukot in Taluka Umarkot have been included in the list of camping places in a Taluka Diplo. Obviously, both Naukot and Gainda Bet appear to have been erroneously mentioned in the list. As long back as 1855, it was recognised by the authorities of Thar Parkar and the Political Agent, Kutch, that Gainda Bet was within Kutch limits.

2.03.1 Pakistan submits in evidence two extracts from the Births and Deaths Register of Deh Liari, Tapa Rahim ki Bazar, Diplo Taluka, showing entries during the years 1939–42 of births and deaths in a place, or places, called "Ding Mian" and "Ding". In Pakistan's submission there never existed any village called "Ding", but a British customs outpost was located at the place marked "Ding" in the Jurisdictional Map of Pakistan until 1954. Pakistan says that the ruins of this outpost have been found by Pakistan upon investigation on the ground to be situated at the small circle south-east of the oval mark next to the "D" in "Dhing Naka" on the Pakistan Jurisdictional Map. The co-ordinates for the outpost are stated by Pakistan to be East Ding 2456960, North Ding 801700. The outpost is said to have been situated near Pirol Valo Kun, and affidavits submitted by Pakistan indicate in its submission that it was close to Lake Shakur. The indicated geographical position would place Ding outside the Sind boundary as conceived by India, and the entries in the Births and Deaths Register, therefore, are relied upon by Pakistan for the same purpose as the extracts from the census of Diplo Taluka, relating to Shakurji Kandi, referred to in Section 2.02. India points out that in the map enclosed with a letter dated 3 May 1965 from the Permanent Representative of Pakistan addressed to the President of the Security

Council, reproduced in the United Nations Security Council's Document No. S/6322, dated 3 May 1965 (Ind. Doc. AA-1), Ding is shown outside the Rann and within the land territory in Sind. Pakistan submits that while Ding is not correctly shown on Indian Map AA-1, it appears correctly on Pakistan Maps 91 and 92.

2.03.2 India, as noted in Section 14.07, was prepared to assume, for the purposes of argument, that the customs outpost at Dhing Naka was situated to the south of the boundary symbols as shown in Pakistan Map 92, but submits in regard to the entries in the Births and Deaths Register that they must by their very nature refer to places inside the Sind boundary as conceived by India and that there must have been an inhabited place or village called Ding within such boundary; however, it has not been possible for India to verify the location of such a village or place on any available map. (Deh maps and settlement maps do not exist in Thar Parkar.) Pakistan argues that the nature of the entries in the Register is such that the settlement might well have been a temporary establishment, such as a customs outpost.

2.04 The Tribunal observed that the following statement appeared in a Diplomatic Note from Pakistan to India of 20/22 September 1954:

> "In 1923–24 an area measuring 20–27 acres was brought under cultivation by a certain Arbab Mir Khan and his son Muhammad Unis, and another piece of land measuring 20–23 acres in 1924–26 on Sanhro Canal. This canal, about 40 years ago, used to take off from Dhoro Puran at village Rahimki Bazar and flowed 7 or 8 miles in the Runn. The revenue due on the paddy crop cultivated with the water of this canal was collected by the Taluka of Diplo. The two old villages called Vigakot and Kanjhikot (in the Runn), which are extinct now, were under the jurisdiction of the Government of Sind." (Pak. Doc. B.163.)

3. *Construction, Maintenance and Marking of Roads in the Rann, and Construction of Dharamsalas on Bets Therein*

3.01 Both Parties place reliance on evidence relating to construction, maintenance and marking of roads in the Rann, and construction of dharamsalas on bets therein, contending that such instances constitute exercise of administrative functions by Sind and Kutch, respectively, or recognition by one or the other of the exercise of such functions by the other of them.

3.02.1 Pakistan relies on certain documents which show that in 1850, the Commissioner in Sind sanctioned expenditure for the erection of marks along a road across the Rann between Baliari in Sind and Dhrobana in Kutch. The documentary evidence on this point may be summarised as follows.

3.02.2 By letter of 8 August 1850, the Deputy Collector and Magistrate of Thar Parkar District asked the British official in charge of Thar Parkar District for permission to erect four to six marks in the Rann on the aforesaid road. The purpose of these marks was to guide travellers in general and mounted postmen in particular. The erection of the marks was authorized, and definite sanction of the expense was eventually given by the Commissioner in Sind on 13 August 1850.

3.02.3 Both Parties rely on further correspondence on the same subject exchanged in 1854. In that year, the Assistant Political Agent in Kutch, by a Memorandum of 20 December 1854 written in the Gujarati language, referring to the road in question, informed the Rao of Kutch that a rest house would be built in Baliari (the starting-point of the road in Sind territory) and submitted a request of the Deputy Collector and Magistrate of Thar Parkar District for the consideration of the Rao. The translation of the passage setting out this request has been in issue between the Parties. Pakistan maintains that the sentence should read as follows:

> "In the midst of the Rann, there is a Bet called Gainda where a Dharamsala and a well are to be constructed and it is within Kutch limits and, therefore, he asks for your wishes." (Pakistan Counter-Memorial, para. 196.)

India, by an agreement of 20 December 1966, has accepted this translation. (Pak. Doc. B.278/3.)

3.02.4 The Rao of Kutch, in a Memorandum No. 383 of 27 December 1854, likewise written in the Gujarati language, in response to the request, undertook to fix guide stones in the Rann and to construct the well and the dharamsala in Gainda Bet. He did, however, inquire about the reason for erecting the guide stones.

The correct translation of certain words in this Memorandum has become an elaborately argued issue between the Parties. While the Parties, by the agreement of 20 December 1966, reached a common understanding on the correct rendering in English of the Gujarati text, the words italicized in the quotation below are accepted only as a literal translation by India.

The document reads:

> "Your memorandum No. 720 dated 20th this month is received and with it is sent a copy of Memorandum of the Deputy Collector and Magistrate of Thal Parkar. In this it is stated that the distance between Dhrobana and Baliari is long and therefore a Dharamsala will be built at Baliari for water and shelter to people and in the Rann Gainda Bet, etc *is the limit of Kutch*, where a well and a Dharamsala are required and you have written to ask our wishes with regard to the idea of having guide stones in the whole Rann because of the boundary of Kutch therein. In reply, we state that Sarkar may well construct a Dharamsala in Baliari if they so desire, and fixation of guide stones in the Rann and construction of well and Dharamsala in the above bet will do, being our limits. But what is the reason for fixing stones in the Rann and how they have to be fixed. These have not been stated by you. Therefore when you come here we shall ask you and take your advice and do what is necessary." (Ind. Doc. A-70; Pak. Doc. B.278/3.)

3.02.5 A reply to the Rao's Memorandum was sent by the Assistant Political Agent to the Rao under date of 16 January 1855 in which the purpose of the proposed guide stones was stated.

A subsequent Memorandum of the Darbar dated 27 February 1855 stated that "Sarkar may well get fixed the guide stones", while the well and the dharamsala were, as originally agreed, to be constructed by the Rao in the following year.

Raikes' *Memoir on Thurr and Parkar Districts of Sind*, of 1856, says that "previous to 1855 no public works were undertaken in the Thurr and Parkar". (Pak. Docs. A.13 and A.14.) In the beginning of that year, the Commissioner in Sind "sanctioned and recommended" various public works enumerated in a subsequent list. These included marking out the road across the Rann from Baliari to Koura [Khavda] which is the same road as that referred to in the correspondence set out above in this Section.

3.02.6 Pakistan places reliance on the correspondence of 1850 as showing that the expense of erecting the road marks would not have been incurred by the British Administration unless at least a portion of the Rann belonged to Sind. However, India submits that the correspondence clearly shows nothing more in favour of Pakistan's case than that sanction was obtained for the erection of four or six marks somewhere in the Rann for the purpose of guiding mounted postmen across the Rann, at what is stated to be a trifling cost to the British Government. The guide stones were for the convenience of the Sowars who took the post from Sind to the Political Agent, Kutch and it is therefore only natural to say that the liberty was being taken of debiting the expenditure to Government. Apart from that, there is no evidence to show that road marks were actually erected after the Political Agent, Kutch and the Commissioner in Sind approved the proposal.

3.02.7 Pakistan argues that the statement of the Rao in his Memorandum No. 383 amounts to an admission by him that Gainda Bet was *the* limit of Kutch. India denies that the statement constituted an admission and contends that the italicized words merely repeat as a preamble the Memorandum of the Assistant Political Agent to which it was a reply and which in turn merely stated that, since the bet in question was in Kutch territory, the construction of the well and the rest house should be undertaken by Kutch. Pakistan contests this interpretation on the ground that the words refer to the Memorandum of the Deputy Collector and Magistrate of Thar Parkar, which has not been exhibited. In Pakistan's submission, the Rao's Memorandum must be read as an admission that the boundary lay in Gainda Bet, and further support for this proposition is sought in the expression used in the Memorandum of 27 February 1855: "by reason of our boundary in the Rann". India says that apart from anything else the Maharao certainly was not going to delimit his possessions and to restrict them.

3.03.1 It appears from the documents cited in Section 3.02.5 that the guide stones were eventually fixed as part of a public works programme undertaken by the Administration in Sind. However, the Bhuj Vahivatdar asserted in his second Report of 1876, quoted in Chapter VIII, that the guide stones were fixed by Kutch officers at Kutch expense.

3.03.2 The public works programme cited in Section 3.02.5, also comprised

other items, among which the following are relevant: Clearing a road from Rahim ki Bazar along the edge of the Rann through Parkar to Suigam; marking the part of said road between Parkar and Nara Bet and a road between Parkar and Kutch; the construction of dharamsalas at, *i.a.*, Nara Bet.

3.03.3 Other documents relied upon by Pakistan show the provision of funds for repairs of a dharamsala on Nara Bet in 1872, 1875, 1877 and 1879–80. A dharamsala on Bardia Bet was included in the property list of Nagar Parkar Taluka in 1877. A Report of the Mukhtiarkar of Diplo, to the Deputy Collector of Thar Parkar, of 7 May 1892, indicated a camping place on Gainda Bet as being situated in Diplo Taluka. (cf. Section 2.02.3.)

3.03.4 In the submission of India, the construction or repair of dharamsalas by the British Government does not prove that the territory was British as, India argues, such a public work was for the benefit of pilgrims and travellers generally, journeying from either side of the Rann. On the instances concerning dharamsalas, India states:

> "They are not much of an institution as they generally consist of nothing except a shed of some kind or three or four rooms without any doors and a compound where you park your camel, go inside, take your bedding, cook yourself something and stay for the night. These are for the benefit of travellers whoever they be and either from one side or the other side. Occasionally also they were havens for the banditti but that was not an intended purpose." (Verbatim Records, p. 10972.)

In regard to the instances concerning Nara Bet, India also argues that they lack relevance as the ownership of Nara Bet was acknowledged by the Government of Bombay Resolution of 1897 to vest in the Suigam Thakores (cf. Chapter VI, Section 4). Pakistan replies that these instances prove at least the absence of Kutch from the northern half of the Rann.

India further says that there is nothing to prevent a national of a State putting up a charitable institution in another State, particularly when it is for the convenience of both States and there is constant traffic between them. This would not be an instance of exercise of jurisdiction.

3.03.5 Other instances relied upon by Pakistan are the provision of funds in 1872 for repairs of roads between Nagar Parkar and Bela and Nagar Parkar and Kutch. Pakistan submits that the repairs related to a section of the roads of which at least three and a half miles lay in the Rann. India would assume that the figures are correct but argues that, if the repair is done for two or three miles more than would be strictly necessary, it does not signify anything at all in the context of the large issue before the Tribunal.

3.03.6 In reply to India's argument that many of the instances dealt with in this Section which are relied upon by Pakistan are trivial in character, Pakistan submits that it is significant that all public works required and possible to execute in the area of the Rann were carried out by Sind.

4. *Fishing Licences*

4.01.1 Pakistan relies upon an instance which transpired in 1903 concerning fishing rights in a dhand (depression) of the Puran River said to be situated five miles beyond the surveyed limits of the Badin Taluka in the Rann. As claims of rival contractors to the fishing rights therein had arisen, the Collector of Hyderabad addressed an inquiry to the Commissioner in Sind, in which he raised the question whether the Government could assert any right to the dhand or whether the matter was one which ought to be left to the Kutch authorities to deal with, as he did not know whether Sind jurisdiction extended beyond the edge of the Rann; he suggested that the Kutch Darbar had not moved in the matter and the best course would be not to interfere with those engaged in fishing operations. The Commissioner in Sind, by letter of 2 March 1903, replied that no notice should be taken of the persons fishing in the dhand but that "if the Cutch authorities try to levy anything from those persons or try to exercise in any other way authority in the half of the Rann that lies next to Sind, the fact should be reported as *prima facie* the rights of the Sind Authorities extend to at least the centre line of the Rann". (Pak. Doc. B.381.)

4.01.2 India's comment is that the commissioner merely expressed an opinion. While stating that territorial rights cannot be based on acts of private individuals, like grazing, India says that a lease granted by Government for fishing rights might stand on a slightly different footing.

4.02 In an Office Note of the Deputy Collector of Thar Parkar dated 2 September 1926, appears the following statement:

> "To the west of Puran are dhandhs containing fish & Pan pabun, lease of which is disposed of by British Govt & the sale proceeds credited to that Govt. The islands marked are situated in the same line with these dhandhs & above Allah bund." (Pak. Doc. B.220.)

4.03 The Tribunal observes that the following statement appeared in a Diplomatic Note from Pakistan to India of 20/22 September 1954:

> "The lake called Shakur-ji-Mian which was about 6 miles from Rahimki Bazar in the Runn used to get water from the Dhoro Puran and the lease for catching fish in the lake fetched Rs. 50,000/- a year to the Government of Sind." (Pak. Doc. B.163.)

5. *Projects for Canals and Irrigation Systems*

5.01.1 In the western part of the disputed territory there formely flowed a river, the southern portion of which was known as Khori River. It emptied into the Arabian Sea through the Khori Creek. Its waters originated in branches of the Indus River, parts of which are known as the Goonee and Puran Rivers. In the latter part of the eighteenth century, the rulers of Sind constructed artificial embankments, known as "bunds", on the Goonee and Puran Rivers. The motives for this action have attracted considerable argument in the case; the issue is referred to in Chapter III. The embankments, and the further

obstruction created by the large mound known as Allah Bund, which was raised by the earthquake of 1819, had the effect of cutting off the flow of Khori River, thereby destroying a considerable tract of fertile land through which it formerly flowed.

5.01.2 In 1843, the Government of India passed a Resolution directing that a survey be made of the Allah Bund "and of the bed of the Branch of the Indus, there intersected, from the point where it leaves the main River to the Sea" and that a full report be made on the lake then existing below the Allah Bund "and of the Country from the Lake to the Sea". The Resolution states that it was passed after taking into consideration "the extensive injury which the Government of Sinde inflicted upon the people of Cutch, by placing a Dam across the branch of the Indus" and as the Governor-General was desirous of repairing such injury. (Ind. Doc. A-25.) Pakistan states that the area to the south of the lake was undoubtedly Kutch and the operation directed would benefit that area of Kutch. The Resolution carries no implication that either Allah Bund or the lake below it is Kutch territory. The stated purpose of the enquiry was to "restor[e] that Branch of the Indus to its old course as far as the same may now be practicable without affecting the Navigation of the River". The Resolution directed the Government of Sind to carry out the investigation.

5.01.3 Captain W. E. Baker, Superintendent of Canals and Forests in Sind, was appointed to make the investigation. It appears from a document cited by India that an agent of the Maharao took part in it (in Ind. Doc. A-26).

5.01.4 A first Report was made by Captain Baker under date of 18 July 1844 (Pak. Doc. B.271/Ind.), which stated that the object of his inquiry was a request by the Maharao for "permission to remove all obstructions in the Goonee and Pooraun Rivers between Kasimpoor and the Allah Bund with a view of restoring a portion of the Indus waters to one of the ancient mouths of that River called the 'Koree' near Luckput". It described, *inter alia*, the embankments obstructing the flow of water on the two rivers and discussed the feasibility of carrying out the project envisaged by the Rao. The Report concluded that the project was not practicable as the volume of water above the embankments was not sufficient for the purpose of driving the large body of salt water in the Sindri Lake into the ocean. The Report indicated, however, that the desired objective might be attained by re-opening the Narra River.

5.01.5 The Rao, in a Yad (Memorandum) of 6 August 1844 to the Political Agent in Kutch, stated:

> "I have always had the intention of clearing the salt lake, since the earthquake of A.D. 1819 on the south side of Sindree there has been a range of sand Hills about 3 Coss in length consequently when it rains the salt water comes from the East & remains stagnant – and this is the reason that there is always salt water about the Sindree, if a water Course was to be cut through

> the sand Hills till it again reached the bed of the River it would then all run off into the sea, and then the ground when the salt water always remains stagnant would become dry, in the rains Boats would be able to ply between Sindree and Lukput which would be of the greatest advantage to me, and there would be plenty of grass on that ground and consequently a great many cattle, and the duties on the Ghee very considerable. For these reasons I have long intended to drain the salt lake, but as yet have not been able to afford it, now I am ready to raise the money for the cutting the water course. I propose for carrying off the salt water if the Sirkar will kindly allow the River to flow there, because it would be of the greatest advantage to my Country if the sweet water should be allowed to flow on the Coree and I hope you will make known my petition to the Sirkar." (Ind. Doc. A-26.)

The Political Agent in Kutch, in a covering letter forwarding the Yad to the Government of Sind, stated that "[t]he sand Hills mentioned by His Highness is well Sindree, are within his dominions". (*Ibid.*)

5.01.6 Captain Baker submitted a second Report, dated 14 October 1844, in which he discussed the suggestion of re-opening the Narra River and stated, *i.a.*:

> "The Rao of Cutch also has expressed himself very anxious for the re-opening of the Narra, which, where it approaches his territory, takes the name of the Pooraun. He anticipates from this source a compensation for the waters of the Goonee having been of late years prevented by constructions from finding their way to the Luckput Creek, a subject which has already been reported upon. It is probable that, in consideration of these prospective advantages, both Ali Moorad and the Rao of Cutch would be willing to contribute a portion of the expense of this undertaking." (Indian Memorial, para. 188.)

5.01.7 India relies upon the Reports of Captain Baker as demonstrating that the areas in the Rann affected by the proposed irrigation projects, including Sindri, implicitly and explicitly were acknowledged to form part of Kutch territory. The second Report is relied upon as showing that Captain Baker expected the Rao to contribute to the expenditure involved in the project since it was to irrigate his territory in the Rann. Pakistan contends that the benefits of the scheme were apparently restricted to the area in or near Lakhpat. Pakistan further relies upon another passage in Captain Baker's first Report where, in discussing the embankments constructed in the eighteenth century, he remarks that "it will also be recollected that the evil inflicted on Cutch [by the construction of the Mora Bund on the Goonee River] was shared by 30 miles of Sinde territory". (Pak. Doc. B 271/Ind.) Pakistan argues that this statement implies that the territory of Sind was acknowledged by Captain Baker to extend to Sindri, as it can be shown by measurement that Sindri was situated at approximately that distance from Mora Bund southwards, and that Sind would thus comprise what in its argument Pakistan has termed the "upper lands in dispute". India argues, however, that Captain Baker's statement must be interpreted in the context to refer to 30 miles of territory situated north of the embankment, as the sentence in which it appears refers to the accumulation of water above Mora Bund.

India draws attention to another passage in the Report, which reads as follows:

> "The effects of these Bunds, though excessively injurious to the lands below (which, by cutting off the supply of moisture, they have converted into a barren and nearly uninhabited waste) have been by no means productive of unmingled benefit to those above them. They have, it is true converted a large tract of country into a swamp well suited for the cultivation of rice but they subject it to the casual evil of submersion by an unusual flood, before the bunds burst and to a certain tho' gradual one by the choking up of the Goonee . . .". (*Ibid.*)

India argues that if the two passages are read together the 30 miles Sind territory would really be the Sind territory above the bund.

Pakistan points out that the expression used being "shared by", the evil must be of the same kind with reference both to Kutch and Sind. The Indian attempt so to interpret this expression as to mean that below Mora Bund the evil was drought and above Mora Bund the evil was flooding is inconsistent with the expression used. Moreover, Baker describes the flooding above Mora Bund not as an evil but as not being "unmingled benefit" as the flooded area was suitable for rice cultivation. Pakistan contends that the lands referred to as being above Mora Bund are not those to which reference is made by the expression 30 miles of Sind territory.

5.02.1 The British Government later asked Lieut. J. G. Fife to consider further the question of re-opening the eastern branch of the Indus. He submitted a Report, dated 16 September 1852, in which the following statement appeared:

> "As far as Roma-ka-Bazar, in the vicinity of which place the British territory terminates there is a great deal of culturable land, but below that place, within the possessions of the Rao of Cutch, the soil is said to be much impregnated with salt and very unfavourable." (Indian Memorial, para. 188.)

5.02.2 India relies upon this statement as showing that the British territory was considered to extend up to Rahim ki Bazar only and that the Rann south thereof was acknowledged to belong to the Rao of Kutch. Pakistan submits that Lieut. Fife's remark was a mere reference in passing, not relevant for the purposes of his Report and seems to be an error caused by the fact that the revenue limits of Sind did not go beyond Rahim ki Bazar. Pakistan further argues that the term "vicinity" in the quoted passage "is not very definitive and one does not know how far the 'vicinity' extends. It depends upon what scale a person has in mind". (Verbatim Records, p. 4552.) India replies to the latter argument by stating that when Fife says "vicinity" he uses the word in the ordinary manner which is "in the neighbourhood".

5.03 Pakistan introduces in evidence a "Map of the Eastern Nara District Showing Reserved Forest", signed by the Executive Engineer of the Eastern Nara District in 1905 (Pak. Map 132). This map depicts a channel through the Allah Bund, opposite which the following note appears:

> "This channel was excavated by the Mirs after the formation of Allah

> Bund (by earthquake) it is demarcated all across the Rin, is for its last 4 miles 180' wide and 10' deep and drains off rain water."

There is a mark in the channel at Allah Bund with an arrow pointing to the words "cutting done in 1883". Pakistan relies upon the map as showing that such a channel was dug in disputed territory by the Amirs before 1843, and then again by the British in 1883. India submits that the map was sent with a document for a specific purpose unrelated to the depiction of canals and that, in any event, boundary symbols along the line adopted by Macdonald appear on the map.

5.04 Pakistan relies upon a map of 1928 entitled "Fuleli Canals Division; Improvement to Fuleli Escape; Index Plan Showing Existing Fuleli Escape, Dhoro Puran with its Branches". (Pak. Map 91.)

This map shows in Pakistan's submission that branches of canals were being planned as extending up to Allah Bund. India submits that the "branches" indicated on Pakistan Map 91 are not, as contended by Pakistan, projected canals but branches of the Dhoro Puran River, and that a Report of the Executive Engineer, Public Canals Division (Sind Division, Government of Bombay) found in the file from which the map had been taken, makes it clear that the relevant project extended no further south than "up to the tail of the Fuleli Escape". A drawing from the same file of the canals actually planned has also been exhibited by India. It may be remarked here that two maps of Sind appearing in the Review of Administration in the Bombay Presidency (1933), exhibited by India and marked TB-14 and TB-15, which predominantly depict canals and irrigation systems in the division, do not indicate any canals or other water works in the disputed territory.

5.05 India cites another instance relating to irrigation which is summarised as follows in the Indian Memorial:

> "After finding that any scheme of reopening the eastern branch of the Indus to irrigate the old district of Sayra as not feasible, the Rao of Kutch entertained the idea of irrigating the Bunnee by a canal from the Indus from Ali Bander (*vide* para 211 of the Kutch Administration Report, 1876–77 [Ind. Doc.] A-38). The scheme, however, had to be abandoned altogether as it was felt that the levels were against it and the cost of construction and maintenance would be far more than the State could afford. (Paragraphs 212 and 213 of the Kutch Administration Report, 1877–78, [Ind. Doc.] A-39)." (Indian Memorial, para. 190.)

5.06 Pakistan submits in evidence three maps reproduced from a volume entitled "Indian Irrigation Commission Report, 1901–03, Maps" (Pak. Maps 53, 54 and 55). Two of the maps are relied upon as purportedly showing that the territory of Kutch did not extend beyond its mainland as no portion of the Rann was shown as included in Kutch.

5.07.1 In 1943, the Maharao of Kutch asked the Government of India to suggest the name of a suitable irrigation engineer to advise the State on its several irrigation projects. On the recommendation of the Government of India, the Maharao appointed as consultant Mr. C. G.

Howes, then Chief Engineer and Secretary to the Government of Sind in the Public Works Department. He was requested to report on the question of bringing the waters of the Indus to Kutch for irrigating the Banni.

Mr. Howes submitted a preliminary Report with enclosures to the Maharao with a covering letter of 24 July 1943. (Ind. Doc. A-63.) The conclusion reached in this Report was that the irrigation of the Banni lands would not be feasible at any reasonable cost.

Mr. Howes referred to an enclosed blueprint map, a copy of which is exhibited as Indian Map B-55. The Report discusses the idea of constructing a barrage on the Indus (referred to as "the Lower Sind Barrage") in Sind in the vicinity of Jherruck at a point marked Hajipur on said map. It was proposed to build a feeder from this barrage along a line drawn in red on the map in a south-easterly direction to the vicinity of Luna. At the southern tip of what is known as the first loop, north of the Rann, a point was indicated at a distance of 75 miles south of point Hajipur, and the Kutch border was said to be situated at said point 75. Mr. Howes suggested that one alternative scheme which might merit further investigation would be to irrigate and thus reclaim an area of 100,000 acres of the Rann immediately south of point 75. The coverage letter refers in this context to cultivation of the "land on the north side of the Rann next the Sind border" and states that for the purpose of cultivating this land" along the Sind border ... a bund [might have to be constructed] round the area irrigated to keep out Rann waters and flood discharge from the east". Mr. Howes advised that if either of the alternative schemes outlined in his Report were adopted, "it would be necessary for the Sind Government to construct all the work lying within Sind Territory", for which the Sind Government was expected to charge "the normal percentage". (Ind. Doc. A-63.)

5.07.2 A year later, Mr. Howes, then attached to the Engineer-in-Chief's Branch, General (Army) Headquarters, India, in replying to a communication of the Maharao, stated in a letter dated 25/26 September 1944, that for the purpose of "bringing water from the lower Sind Barrage to your lands on the north side of the Rann of Cutch", it might also be possible to lay pipes, submerged in the water on the Rann during the tide periods, to the other side of the Rann, but such a project would need to be further investigated. Mr. Howes added:

> "If you feel that your lands on the north side of the Rann are suitable for growing rice, and if you also consider that the financing of the scheme is feasible I would suggest that you should write through the Political Dept. to the Sind Govt. and ask them if they would undertake for you a survey of ... the canal..., to supply water to you, and to investigate soil conditions...". (Ind. Doc. A-64.)

5.08 The Maharao does not seem to have acted upon Mr. Howes' suggestion. However, on 7 August 1946, the Dewan of Kutch requested the Secretary to the Resident at Baroda and for the States of Western

India and Gujarat, Rajkot, that the Central Waterways Irrigation and Navigation Commission (CWINC) be asked to investigate the financial and technical aspects of the project of bringing Indus waters to the Banni; a copy of Mr. Howes' report was enclosed. As a result of this request, Mr. Hehsin Ali, Irrigation Member of the CWINC, was instructed to investigate and report in the matter. After visiting Kutch and making an investigation, he submitted a Note on the subject, dated 16 May 1947, in which he summarised the results of his enquiry and stated, *inter alia*:

> "5 (a) It would be quite feasible to irrigate the cultivable land adjoining the Sind boundary, on the north of the Runn, by canals taking off from the projected Lower Sind Barrage. The Cutch Government would, of course, have to pay the cost of such canal extensions as would be necessary, and should lose no time in pegging a claim for their rightful share in the Indus River waters. The Government of India have accepted the principle that the waters of a river basin should be utilised for the benefit of all the inhabitants of that basin, irrespective of Provincial or State boundaries.
>
> "(b) The construction of a canal across the Runn of Cutch from the tail of the Sind canal system for irrigation on the other side of the Great Runn is an altogether impracticable proposition. In the first place the cost would be totally prohibitive, and, secondly, Sind would never agree to spare any water for lands outside the Indus basin
>
> "(c) The reclamation of the two Runns appears quite feasible with the help of the proposed railway embankments. The eventual cost would probably be very high, but that should not be a deterrent to setting on foot investigations and detailed surveys. This should definitely be placed on the long range programme of development of the country as a whole, and should receive a high priority." (Ind. Doc. A-65.)

A second Note added at the end of the first Note on 17 May 1947, read:

> "It is our considered opinion that Cutch should be given its due share of the Indus Waters for the irrigation of its lands on the northern shore of the Great Runn, and lying in the Indus Basin, *vide* my remarks in para 5 (a) above. I have discussed this with Chairman who agrees with me and has asked me to put it on record." (*Ibid.*)

5.09.1 India relies upon the Reports and correspondence set out in Sections 5.07 and 5.08 as showing that Mr. Howes, who, it is stressed, was Secretary to the Government of Sind in the Public Works Department and its Chief Engineer, and the CWINC acquiesced in or adopted the position that the territory of Kutch began at point 75 indicated on Indian Map B-55. Both Mr. Howes and the CWINC likewise repeatedly referred to territory of Kutch situated on the northern side of the Great Rann. This constitutes clear evidence and knowledge on their part of where the border of Sind was and where the territory of Kutch started.

5.09.2 Pakistan argues that point 75 on Indian Map B-55 and the use of the term "the Sind boundary" in the context means no more than saying that the point mentioned was the one shown on the map as being on the Sind boundary. Further, it was merely an assumption on the part of Mr. Howes that the area south of where the Sind boundary was

shown on the map was Kutch territory. With regard to the Note of the CWINC, Pakistan argues that its statement, when read with the map, means no more than that the area shown on the boundaries of Sind was erroneously assumed to be the area of Kutch. Moreover, the recommendations of the CWINC were not acted upon and hence are of no consequence.

6. *Salt*

6.01 Both Parties introduce in evidence various documents relating to the extraction of salt in the area of the Rann, levies of duties or taxes on salt, and restrictions pertaining to its use.

6.02 Pakistan contends that the Amirs of Sind controlled the salt resources in the Great Rann; support for this proposition is sought to be derived from a letter of 1845 from the Collector of Continental Customs and Exercise to the Revenue Commissioner, Northern Division, which refers incidentally to "the right which we find exercised by the Scinde Durbar on the produce of the salt in the greater Runn . . .". (Pak. Doc. B.264.) While Pakistan relies on the statement made in said letter as showing that such a right was exercised up to 1843 by the Sind Darbar "in the greater Runn" (which right in 1843 passed to the British) and thus as evidence of display of authority by Sind over the Rann, India submits that said expression must be understood to refer to manufacture of salt (as distinct from collection of natural salt) on the edges or in pockets of the Rann in undisputed Sind territory.

6.03 Pakistan further relies on instructions given to the Mukhtiarkar of Mithi Taluka in implementation of regulations effective on 1 April 1862 which subjected the extraction of salt even for personal consumption to prior Government licensing (Pak. Doc. B.32). The letter provided that leases for salt production in certain zones or in "the whole of the Rann which falls under your jurisdiction" should be auctioned. While Pakistan contends that the zones specified in the letter embraced salt beds south of the border of Mithi Taluka, India argues that the expression "the Rann", as used in the letter, should be understood to refer to inlets or pockets thereof and points out, by reference to Pakistan Map 9 and Indian Map B-48, that there were salty places in the zones mentioned.

6.04 India relies upon a letter of the Dewan of Kutch to the Political Agent, Kutch, of 1880, in which the Dewan expressed views regarding the proposal to establish a Salt Preventive Service. The Dewan suggested in the scheme proposed by him that a preventive post should be established also in Dhara Banni. India argues that this indicates that Dhara Banni was within the jurisdiction of Kutch. Pakistan has produced a letter from the Political Agent, Kutch, and the Acting Collector of Salt Revenue to the Government of Bombay and contends that the scheme proposed by the Dewan of Kutch was not intended to cover merely the territory of Kutch but was a general

scheme; Pakistan points out, in particular, that the Dewan proposed a post at Bhangeria Bet which was not within the territory of Kutch.

6.05.1 In India's submission, which is not controverted by Pakistan, the Government of India had by 1886 established a salt monopoly embracing both British India and the Indian States, but effected through different means, and variously organised and administered in different parts of the sub-continent. The monopoly was exercised for revenue purposes. (Official Records, 145th Meeting, para. 5.)

6.05.2 The salt monoploy is said to have originated in the assertion on the part of the Paramount Power of an imperial prerogative. Pakistan argues that whereas the establishment of the salt monopoly in the territory of Native States invariably was conditioned upon the payment of compensation, in respect of the Great Rann no such compensation was paid as the Rann was not regarded as forming part of the territory of any State. The Salt Department therefore treated the Rann as no man's land. This argument is buttressed by reference to statements made in a file concerning certain claims made by the State of Tharad. A Bombay Government Resolution of 1885 in that case asserted that the Government controlled "the Runn, which is waste". It appears from a note in the file made in 1886 by the author of said Resolution, Mr. J. B. Peile, that the British Government "asserted its right to control the salt deposits along the edge of the Runn where it touches the Palanpur States, partly because the Runn is no man's land, and partly because the Mahrattas had done the same". (Pak. Doc. B.310/Ind.) Since the Governor-General in Council, in disposing of the case, did not decide it with reference to the issue whether the disputed salt resources were or were not connected with the Rann, the decision did not deal with the assertion that the Government did control the salt resources in the Rann. In the submission of Pakistan, this evidence directly contradicts the Indian assertion that the British Government of India regarded the Rann as belonging to Kutch.

6.06 India submits that, while the salt monopoly had by 1879 been established in the Rann, Kutch at all times retained exclusive control over the salt resources on its mainland and in the Rann for purposes of internal consumption, the monopoly restrictions therefore merely operated to prevent salt fom being exported from Kutch territory.

7. *Military Districts and Military Control*

7.01 India, in the context of dealing with political conditions during the first three decades of the nineteenth century, advances the thesis that the connections of the British with the Rann originated primarily with efforts to fulfil their obligations to maintain the integrity of the dominions of the Maharao of Kutch. Against this background, India asserts that the British "regarded the Rann within the sphere of their control". (Indian Memorial, para. 203.)

7.02 India relies on a letter of 19 January 1899 from the D.A.G. Bombay Command to the G.O.C. Bombay District, with notes concerning a

revised definition of the boundaries of the Deesa and Bombay Military Districts. The document refers to an accompanying map, which is not exhibited in the case, and contains a note relating to it, which reads:

> "In the accompanying map, the whole of Kathiawar, and Gujarat upto Combay on the south, Erinpura on the north, Oodeypore, & Kherwara, on the East, & the whole of the Runn of Cutch upto Sind borders, & Wagur, is painted green, as Daesa District. The rest of Cutch, & the Bombay Presidency upto Mahi river on the north is painted yellow, as Bombay District.
>
> "The country to the north & west of Erinpura, & to the East of Oodeypore & Kherwara, is painted red, as Mhou District." (Ind. Doc. A-95.)

India submits that "[t]hese arrangements also indicate that the British Government were exercising control over the Rann of Kutch". (Indian Memorial, para. 206.) This statement, Pakistan submits, amounts to an admission by India that the Rann did not belong to the Rao of Kutch.

7.03 Reference is made here to the Military Report on the Sind Independent Brigade Area of 1928 which is referred to in Chapter VII.

8. *Patrolling Under the Cease-Fire Agreement of 1965*

8.01 In response to a question of the Tribunal respecting the location of the patrol tracks referred to in paragraph (iv) of Article 2 of the Agreement of 30 June 1965, India submits that they were established at a meeting between Pakistan and Indian officials at Vingi on 29 July 1965. Minutes of said meeting are produced in evidence, together with a map annexed thereto. (Indian Statement 10.) India stresses that "[t]he tracks shown in the Map merely indicate the routes along which the Indian and Pakistan patrols are to move, as a cease-fire arrangement, and are not relevant to the questions to be decided by the Tribunal". (Verbatim Records, p. 15492.) These facts and submissions are accepted by Pakistan. (Verbatim Records, p. 18322.)

Paragraph 3 of the aforesaid Minutes, in conjunction with the annexed map, records an agreement establishing a Pakistan southern patrol track between Ding and Surai, running just south to Kanjarkot, and an Indian southern patrol track from Chhad Bet to Karim Shahi and thence to Kanjarkot. As noted in the Minutes, the position of Ding as indicated on the annexed map was – and is – disputed by Pakistan.

9. *Survey Operations*

9.01 It seems undisputed between the Parties that at all relevant times, consent was required on the part of Indian States for surveys to be effected on their territory by the British Administration. An illustration thereof is afforded by a rule contained in the 1936 Edition of the *Handbook of Topography*, which states:

> "The Director is required to obtain the approval of the local Governments and Indian States through Political Administrations in his Circle to

the programme [of triangulation and traverse], in so far as it affects each authority respectively." (Verbatim Records, p. 6801.)

9.02 India introduces in evidence a diary of incoming and outgoing correspondence of the Political Agent in Kutch for certain periods in the years 1867–68, in which there appear entries of correspondence between the Political Agent and the Superintendent, Great Trigonometrical Survey, on the subject of a proposed Geological Survey of the Rann. It seems that the regular operations of the Geological Survey in question were extended into Kutch toward the end of 1867. India relies on the entries to show that it was not necessary for the Superintendent, Great Trigonometrical Survey, to inform the Kutch authorities of the proposed survey of the Rann unless the Rann belonged to Kutch State. Pakistan submits that it is not possible to draw such conclusions in the absence of copies of the actual correspondence, and that in any event the entries show that the communications were between two British officiers and not for the purposes of communication to the Rao. The citation of the instance therefore in Pakistan's submission is based on a misunderstanding.

9.03 India relies on a diary entry similar to that cited in Section 9.02 for the year 1868 referring to a letter from the Commissioner in Sind to the Political Agent in Kutch, in which the latter was informed that, in the course of Macdonald's Survey, operations in the Shah Bunder District would be commenced in the ensuing cold season. (Ind. Doc. A-84.) The letter added that "perhaps the Revenue Surveyor will have to enter the Rao's territory for the purpose" and requested the Political Agent "to obtain His Highness' permission for the same and to afford reasonable assistance to the Surveyor". In India's submission, this letter shows that the territory adjoining the Shah Bunder District, which falls in the Rann, was deemed to belong to the Rao. In Pakistan's submission, the meaning merely was that Macdonald may have had to go beyond the boundary of Shah Bunder District for the purpose of a necessary overlap in a place where the Sind and Kutch boundary, divided by the Khori Creek, admittedly was conterminous. Courtesy demanded that formal permission of the Rao should be obtained in case such a contingency should arise. Macdonald in fact made a separate sub-circuit which by way of overlap included Kutch mainland on the Lakhpat side, and which is described in his relevant Report as "foreign territory". Pakistan also relies on this instance negatively for showing that, no similar permission having been obtained for any other part of the purple line, no other part of that line was regarded as conterminous with Kutch territory.

In oral argument, India stated that it was not aware whether the State of Kutch gave Macdonald consent to survey these minor portions of what India claims was Kutch territory, outside the boundary of Sind, which he did in fact survey.

9.04 India produces in evidence correspondence preceding and related to Osmaston's Survey, in the course of which prior permission of the

State of Kutch was repeatedly sought and obtained to survey territory now in dispute. Thus, by letter of 30 August 1934, the Director of the Geodetic Branch, Survey of India, requested the Secretary to the Agent to the Governor-General in the States of Western India to obtain permission of Kutch to carry out triangulation "in Cutch State" in an area indicated on an attached Index Map. The area in its entirety lay in the Rann above the 24th parallel in the Nagar Parkar region. Permission was sought as requested and was obtained by letter of the Dewan of Kutch, dated 3–5 October 1934. Again, the Kutch Darbar was asked in 1935 by endorsement of the Under Secretary to the Agent to the Governor-General whether it had any objection to a proposal to triangulate an area in the north-eastern section of the Great Rann, which included a portion of the disputed territory west of the Eastern Terminus, as indicated on an attached Index Map. By letter of 27 August 1935, the Dewan of Kutch stated that he had no objection to the proposed survey. A third request of like character was made to the Dewan by endorsement of 23 September 1937 of the Under Secretary to the Resident for the States of Western India, referring to a portion of the area to which the correspondence was directed. The Dewan replied on 15 November 1937 that he had no objection to the proposed topographical survey being carried out "in the Kutch State". All authorisations above referred to stated, as requested, that the officers of the survey parties could communicate directly with the local district officials regarding details.

India submits that as the correspondence set out in this Section referred to surveys of areas in the Great Rann unquestionably situated above the 24th parallel and reaching up to the northern edge of the Rann, it shows that the relevant areas of the Rann were repeatedly and explicitly recognised and treated as Kutch territory.

Pakistan submits that since the boundary between Sind and Kutch in the Rann had not been specifically determined, the request for permission of the Kutch Darbar for surveying portions of the Rann would be dictated by courtesy, and would not necessarily carry the implication that something that had not previously been determined thereby became determined.

10. *Police Surveillance and Police Jurisdiction (General)*

10.01 India originally submitted that the police of Kutch exercised jurisdiction over the whole of the Rann. The evidence relied upon by India for this proposition were statements made in the Kutch Administration Report for 1889–90.

10.02.1 Pakistan, denying that the police of Kutch exercised jurisdiction over the whole of the Rann, contends that the Rann was considered British territory for police purposes. The evidence relied upon in support of this assertion is principally an exchange of letters in 1898 between the District Magistrate, Thar Parkar, and the Acting Commissioner in

Sind. The former stated, as his opinion, that while the boundary of Thar Parkar District along the Rann had not been specified, and while the defined (northern) edge of the Rann would appear to be the most convenient line to adopt for this purpose, the Rann itself had in former times been looked on as a no man's land in which "on our side at least we have maintained order". (Pak. Doc. B.315.) The District Magistrate inquired in his letter who were to be responsible for maintaining law and order beyond the edge of the Rann, "[i]f it be decided that the natural boundary, i.e., the edge of the Rann is the boundary of this dist...". (*Ibid.*) The response of the Acting Commissioner in Sind was that "[t]he old arrangement must be adhered to, and the Rann, for Police duties, be considered British territory until the question [i.e., the boundary of British territory along the Rann] is settled ...". (Pak. Doc. B.47.)

10.02.2 In Pakistan's submission, this statement of the Acting Commissioner in Sind, when read in its proper context, referred merely to the northern half of the Rann. It purported to cover patrolling, arresting of suspects and inquiries into offences and was, in principle, valid up to 15 August 1947. It also implied a determination of the jurisdiction of the criminal courts in Sind. (Official Records, 162nd Meeting, para. 7.)

10.03 Pakistan explains that the Imperial Police belonged to an Imperial or Central Service and were allocated to Sind and other provinces. The members of the Service allocated to Sind formed a part of Sind Administration, the establishment of police in British India being exclusively a provincial concern.

10.04 Macdonald's maps bear an endorsement that "A Thana was stationed here during the Ameers' Rule", and, relying on this endorsement, Pakistan contends that Amirs maintained a thana outside the limits of the purple line.

10.05 Certain documents relating to police actions against gangs of bandits taken in 1892 and 1923, while relied upon only in respect of statements made therein concerning the alignment of the boundary between Sind and Kutch (cf. Chapter VII), show that detachments of Sind police, in co-operation with Kutch police, engaged in special operations even on the mainland of Kutch.

10.06 With regard to Nara Bet, the Commissioner of Sind in a Memorandum of 20 July 1893, produced by Pakistan, stated that "[t]he British Government by its Thana is the only power that has exercised permanent dominion on [the group of bets of which Nara Bet forms part]". (Pak. Doc. B.239.) Pakistan also submits evidence showing the provision of funds for the repair of the thana in 1872 and 1873. In Pakistan's submission, the thana was established in 1832 or 1834. Nara Bet was the subject of a Resolution of the Government of Bombay of 1897 which is referred to in Chapter VI, Section 4. While Pakistan relies upon the instances cited in this Section as showing the existence of the thana and the position existing at the time, India

submits that the matters are irrelevant as superseded by the Resolution of the Government of Bombay pursuant to which Nara Bet was held to belong to Suigam and accordingly the (British) Thar Parkar thana was to be withdrawn (see Chapter VI, Section 4). Pakistan contends that the incidents relating to Nara Bet are relevant also as proving the absence of Kutch from the northern half of the Rann.

10.07 In oral argument, India stated that on the one hand there is the Kutch Administration Report which says that the Kutch police exercised jurisdiction over the whole Rann, while on the other hand there is the document which indicates that the "old arrangement" must be adhered to, and the Rann, for police duties, be considered British territory. It appears that from the beginning the police were patrolling as a matter of law and order. The Suzerain Power was interested in maintaining law and order. The police patrolling was an arrangement for convenience to which the Rao had no reason to object.

11. *Offences Inquired into by Sind Police*

11.01 Pakistan relies upon several instances where offences allegedly committed by persons assumed to be citizens or residents of Kutch, purportedly committed outside the boundary of Sind as conceived by India, were registered at Sind police stations and investigated by Sind police.

11.02.1 The earliest instance is an entry in the crime register of the Police Station, Diplo, dated 31 July 1939, which records an alleged offence under Section 19 (F) of the Indian Arms Act, committed at "Ding Outpost/Rahimki Bazar" by a person stated to be "resident of Kutch-Bhooj". (Pak. Doc. B.57.) Another instance of a similar character relied upon by Pakistan is an entry in the crime register of the same police station of November 1945 recording an offence under Section 81 (II) of the Defence of India Rules. The offence is registered as having been committed "near Runn Custom post Ding (O.P. Rahimki)". (Pak. Doc. B.63.)

11.02.2 As regards the entries in the registers, India contends that there are doubts as to the factual location of the offences and does not admit that they occurred outside the Sind boundary as conceived by India (cf. Section 12.02.2).

11.03.1 Another instance relied upon by Pakistan may be summarised as follows. A Custom Sowar, in the course of intercepting smugglers, was murdered at a place described in the police report as being situated "18 miles from Ding in the Rann on the road going to Kutch". The offence was inquired into by the Head Constable, Police, Diplo, who submitted a Report dated 13 May 1945. The accused persons fled to Kutch, and Sind police officers therefore endeavoured to solicit the co-operation of the Kutch police to catch them while investigations were continuing in Sind and the property left by the accused on the site and secured by the Sind police was disposed of by

a Sind Magistrate's Order, dated 28 July 1945. (Pak. Docs. B.64, B.178 and B.184.)

11.03.2 According to India's evidence, the offence was committed about 15 miles from the Ding customs outpost (Ind. Doc. AA-16). India submits, however, that the crime was inquired into also by the Kutch police and relies, in this context, on a letter of the Commissioner of Police, Kutch, to the District Superintendent of Police, Thar Parkar. In this letter, dated 4 July 1945, the Commissioner referred to a meeting with the Sub-Inspector of Police, Diplo Police Station, on 4 June 1945, and states that as "the Great Rann of Kutch within this State territory commences immediately after leaving the Ding Out-Post... the murder of the Sowar could not have taken place in the Sind territory". (Ind. Doc. AA-16.)

11.03.3 Pakistan argues that the letter of 4 July 1945 constitutes a paper transaction as it was written merely for the purpose of placing on record a belated statement to the effect that the territory in which the offence took place was Kutch in order to be consistent with the position that was being taken in respect of the incident mentioned in Sections 15.11.3 and 15.11.4. In support of this submission, Pakistan refers to the fact that, as appears from records of the Kutch State Police, exhibited attached to the letter, the case was ordered to be taken on register and investigated in Kutch under an order dated 24 July 1946, thus over one year after the dispatch of the letter from the Kutch Police Commissioner to the District Superintendent of Police, Thar Parkar.

12. *Criminal Cases Tried in Courts of Sind and Pakistan*

(a) *Pre-Partition Incidents*

12.01 Pakistan relies upon some instances in which criminal offences committed outside the boundary of Sind, as conceived by India, have been tried in Sind courts. One such "instance" may be mentioned at the outset. In the course of correspondence among Sind officials in connection with Osmaston's Survey, the Deputy Collector of Thar Parkar stated in a letter to the Collector of Thar Parkar, dated 20/21 May 1938, that "our Magistrates in charge of Nagar Parkar, Diplo and Mithi Talukas have been exercising their jurisdiction as Criminal Courts as far as half the Rann in question". (Pak. Doc. B.230.)

12.02.1 Pakistan submits in evidence an entry in the crime register of the Police Station, Diplo, for the years 1945 which records an offence under Section 394 of the Indian Penal Code (dacoity) committed on 8 July 1940 "near Vigoh kot (Fort) out-post Rahim Ki-Bazar". The register shows that the two accused persons were convicted and that each of them, on 10 August 1945, was sentenced by the First Class Magistrate, Diplo, to two years' rigorous imprisonment. (Pak. Doc. B.58.)

12.02.2 It is stated by India that the site of this offence was outside the Sind

boundary as conceived by India. India pleaded, however, that Sind courts had jurisdiction over any crimes committed by British subjects and that the instance therefore did not amount to exercise of jurisdiction in the Rann. Pakistan in oral argument gave a reference to Section 188 of the Indian code of Criminal Procedure which provided that if crimes were committed by British subjects outside British territory, a condition precedent to the exercise of criminal jurisdiction would be that a certificate be issued by the Political Agent in the State where the crime had been committed, or a sanction given by the Provincial Government of the province where the trial was to take place; the record in the case does not show that such a procedure was followed. (That same arguments are advanced by the Parties, *mutatis mutandis*, in respect of the instances referred to in Section 11.02.)

12.03 Another instance relied upon by Pakistan is referred to in an entry in the crime register of the Police Station, Diplo, for 1945, recording an offence against the Defence of India Rules (customs) committed on 9 January 1945 in "Runn Taluka (Sub-div. of district) Diplo. Outpost Khadai". (Pak. Doc. B.62.) The six accused persons, who were registered as being citizens or residents of Kutch State, were convicted and sentenced by the Court of the First Class Magistrate, Diplo, on 11 January 1945, to various terms of imprisonment. Pakistan submits that the Sind Court would not have had jurisdiction in this case unless the offence had been committed in Sind. India argues that it is possible that police from the Khadai outpost arrested the accused at, or just over the border, but states that possibly the police went after the accused and arrested them one, two or three miles away from the border.

12.04.1 The last instance of this kind cited by Pakistan relates to an assault on a police constable of which citizens of Kutch were accused. As appears from the diary of the investigation made in the case by the Police Station, Diplo, the crime was committed "near a pit of water ...of Bhinar Bet (Biar Bet) at a distance of about one and 1-½ mile from Bhinar Bet (Biar Bet). This area is situated in the jurisdiction of Thanedar Police Khadai of taluka Diplo of Government". (Pak. Doc. B.263.) Biar Bet is situated in the Rann well south of the boundary claimed by India. As the accused persons were subjects of Kutch and had fled to Kutch, the Sind police instituted proceedings under Section 512 C.R.P.C. (to record evidence pending a trial) before the First Class Magistrate, Diplo. After completion of this enquiry, the First Class Magistrate, Diplo, on 12 August 1945, demanded the surrender of the accused persons, one of whom was surrendered and produced on 27 November 1946. The case was then submitted to the Court of Sessions but, at the suggestion of the Court, leave to withdraw was requested by the prosecution before trial for lack of evidence, and the accused was acquitted upon permission for withdrawal having been granted. (Pak. Docs. B.55, B.66, B.261, B.262 and B.263.)

12.04.2 India argues that the primary offence which the constable was engaged in preventing or detecting when assaulted was a case of smuggling and that this primary offence took place in Sind (as the border was crossed) and caused the constable to engage in hot pursuit of the offender. In India's submission, the assault which was the subject of Sind police investigation and of the action before the Sind Court constituted merely consequential matters in relation to the primary offence of smuggling.

(b) *Post-Independence Incidents*

12.05.1 Pakistan relies upon seven instances occurring in the years 1948 and 1949 in which persons accused of illegally exporting food grains or cattle from Pakistan to India were seized in the Rann by Pakistan Customs staff and were convicted, in one case by a Pakistan Magistrate, and in the other cases by Pakistan Customs Collectors, for offences under applicable Pakistan laws. (Pak. Docs. B.67 to B.72, B.80.) One of the instances (Pak. Doc. B.68) occurred in the period referred to in Section 1.05.3.

12.05.2 Pakistan concludes that the courts of Pakistan, after 15 August 1947, could try offences committed by Pakistan nationals outside the territory of Pakistan, without any special permission. Pakistan adds, however, that in such instances complications could arise as to the competence of the police and the prosecutors. (Official Records, 168th Meeting, para. 5.)

12.05.3 It is admitted by Pakistan that the accused in one of the cases (Pak. Doc. B.68) were nationals of Pakistan (Verbatim Records, p. 9851). The accused in three of the cases (Paks. Docs. B.70, B.71 and B.72) are stated to be residents of Kutch; they were therefore likely to have been Indian nationals. In the remaining two cases (Pak. Docs. B.67 and B.69), the accused seemingly were resident in Pakistan and of Pakistan nationality, while in one the accused was unknown.

13. *Criminal Cases Tried in Indian Courts*

13.01.1 India relies upon 22 incidents which occurred in the years 1952–64 and in which accused persons were prosecuted – and in most cases convicted – in Kutch courts for alleged violations of the Influx from Pakistan Act, or of Indian Passport Rules. The illegal entries into India are stated to have taken place in and near Dharamsala, Karim Shahi, Mota Sarfbela Bet, Bavarla Bet and Biar Bet.

13.01.2 Pakistan submits that the instances said to have occurred at Dharamsala Bet, presumably meaning the dharamsala at Gainda Bet, are immaterial if they took place on the Indian side of the border. With regard to Sarfbela Bet, Pakistan submits that it lies almost on the median line in the vicinity of Gainda Bet. In respect to Mota Sarfbela Bet, Pakistan submits that no bet by that name can be located on any map except the sketch at Indian Map B-1, and that the location of the bet is described differently in the several instances cited by India. In

regard to all the instances, Pakistan also stresses the fact that India does not rely upon any earlier instances of exercise of jursidiction over these bets.

14. *Customs*

14.01 The material concerning customs outposts of Kutch at Sindri and possibly elsewhere north of its mainland in the first decades of the nineteenth century is mentioned in Chapter III.

14.02 The State of Kutch, while subject to the suzerainty of the Paramount Power, retained autonomy in the field of foreign trade, and the right to levy customs fell within the sphere of its exclusive determination. India stated in oral argument that "so far as the quantum of duty or the nature of the duty was concerned, the State [of Kutch] was absolute". (Verbatim Records, p. 8683.)

14.03 The second Report of the Bhuj Vahivatdar of 1876, which is referred to in Chapter VIII, Section 1, stated that:

> "On the west of this Khavda [i.e., the place in Pachham] at a distance of about 14 kos there is a hamlet named Luna which is inside the limits of Banni. There also a Darbari Officer, a village accountant and others stay. Darbar duty is being levied on goods transported through the Rann from Sind and Tharparkar by the road under Khavda and Luna. This duty becomes leviable as soon as the goods enter the Rann. If goods are taken back after entry in the Rann, duty has to be paid. This shows that the Rann is within Kutch limits." (Ind. Doc. A-66.)

Pakistan concludes from this statement that in the parts of the Rann covered by the Vahivatdar's Report (i.e., Lunavalo Rann and Pachhamvalo Rann), the only Kutch customs post mentioned was located at Luna and states that the assertion that Kutch duty became leviable upon goods when entering the Rann from the north, even if returned before reaching the mainland of Kutch, is not corroborated by any other evidence.

14.04.1 In regard to a situation which had developed by the beginning of the 1930s, Pakistan has produced an affidavit by Mr. U. M. Ansari, a former Customs Inspector, in which he states:

> "Kutch State had a low tariff, as against high British tariff, applicable to goods imported at Indian Ports. This created an incentive to import goods in Kutch State. Since the State could not utilise all the goods imported at its ports, a large portion of such goods were smuggled into Sind. It was therefore felt that a customs preventive organization should be set up with a view to preventing smuggling of goods into Sind." (Pak. Doc. B.56.)

14.04.2 For the purpose indicated by Mr. Ansari, a chain of customs outposts was set up in 1934 along the northern part of the Great Rann at the places stated in the letter exhibited as Pakistan Document B.55, namely at Kasbo, Malhara, Nabisar, Jattrai, Vingur and Rahim ki Bazar, and subsequently at other places along the "Northern and Sind–Cutch Frontiers Preventive Lines", the alignment of which is indicated in green on Pakistan Map 92.

14.04.3 It appears from Mr. Ansari's affidavit that the staff of the Central British Customs Organisation patrolled the Rann, that a number of offences against salt regulations were detected in the Rann and that offenders were prosecuted and fined.

14.05 Pakistan also introduces evidence in the form of diaries and travelling allowance bills showing patrolling in the Rann by British customs officials on 53 occasions in the years 1945 and 1946.

14.06 It is undisputed between the Parties that the customs outposts were not established and administered by the Sind authorities but by the Government of India and that the patrolling was done by officers of the Central British Customs Organisation, employed by the Central Government. They were invested with power to impose fines for minor offences against the customs regulations, but otherwise such offences were tried by the ordinary local courts.

14.07 India, in oral argument, was prepared to assume, for the purpose of argument, that the customs outposts were in 1941 situated to the south of the boundary symbols as shown in Pakistan Map 92 at Dhing Naka, Karali, Jattrai and, possibly, Chiachupura, but pointed out that the villages were actually to the north of the boundary symbols. (Official Records, 114th Meeting, para. 3.)

14.08 Pakistan relies upon the establishment of the preventive line and the outposts to show that officers of the Central British Customs Organisation established customs outposts and patrolled the Rann without considering it necessary to consult Kutch and without receiving any protest by Kutch. The patrolling instances in Pakistan's submission evidence a consistent display of authority by the British Government in the northern half of the Rann. In answer to an argument advanced by India, Pakistan argues that the fact that these functions were exercised centrally did not imply that they constituted an assertion of the "Paramount" rights of the Suzerain Power. On the contrary, in the context of the British Indian political system, all functions centrally performed under any of the ordinary British Indian laws would perforce be performed in the territory of a province, and the fact that a particular function was centrally performed under an ordinary British Indian law, far from indicating that the territory in which it was performed was other than a province of British India, would necessarily connote that it was a part of a province of British India. Moreover, the Land Customs Act of 1924 was confined to British India, and the customs officers had no authority to enforce its provisions outside British India; the position was the same under the Sea Customs Act of 1878. (Verbatim Records, pp. 8687/95, 8906, 17436–7, 18196, 18203/5–6, 18223; Official Records, 168th Meeting, para. 6.)

14.09 Pakistan further submits that no functions could be performed by functionaries of the British Government in the territories of Indian States except on the basis of treaty provisions or other engagements,

under the doctrine of Paramountcy, or by virtue of extraordinary legislation. (Verbatim Records, p. 18197.)

14.10 India states in regard to the instances of patrolling in the Rann and the establishment of a few customs outposts in the Rann that the Government of India "normally would have entered into an agreement with Kutch State" for this purpose but that this was never done. India submits that Kutch never objected either to the patrolling or to the establishment of the customs outposts for the reason that it was fully aware that what was done was in the common interest of the British and Kutch and that the British had no hostile or adverse intentions and, further, that the territory was recognised repeatedly as belonging to Kutch. (Official Records, 117th Meeting, para. 2.) If subordinate officials did certain things in the Rann in their belief that it was within their jurisdiction, that belief was not shared by the Government.

15. *Dhara Banni and Chhad Bet. Pirol Valo Kun*

15.01.1 On the northern side of the Great Rann, situated about half-way between the top of the vertical line and the peninsula of Wagar Parkar, is an area, the nature of which is disputed between the Parties, called Dhara Banni. Closely connected with Dhara Banni is an area referred to as Chhad Bet.

Dhara Banni and Chhad Bet are situated south of the boundary line claimed by India.

15.01.2 The Parties have made the following formal submissions on the nature and characteristics of Dhara Banni and Chhad Bet, for the understanding of which it is necessary to note that, in the submission of both Parties, Chhad Bet is often included when reference is made to Dhara Banni.

India submits that:

> "In documents and maps, Dhara Bani has been referred to as a bet in the Rann. There is a marked differentiation between the high mainland of Sind and the Dhara Bani. Dhara Bani appears to have been originally a very small island. There are two versions about its origin – one being that it was thrown up from the Rann by the earthquake and the other being that it was detached from the Sind territory. In course of time alluvial deposits were formed adjacent to the original island." (Official Records, 25th Meeting, para. 2 (*b*), and 27th Meeting, para. 2.)

Pakistan submits that:

> "Dera Bunnee also known as Dhara Bani is an extension of the mainland of Sind. It juts into the Rann as a peninsula. Chhad bet is a further extension of Dhara Bani. Dhara Bani never gets flooded by water even though after heavy rainfalls, water remains in certain patches." (Official Records, 34th Meeting, para. 3 (*a*).)

15.01.3 The detailed descriptions of Chhad Bet differ. In one document it is said to be "about 100 square miles in area" (Pak. Doc. B.140/Ind.), whereas another statement describes it as being "about 4 miles broad and about 16 miles long" (Pak. Doc. B.145/Ind.). Many accounts

show that Chhad Bet has rich grazing grounds; in a Report of 1945, it is stated that "[i]n the grazing grounds of the Bets [meaning Dhara Banni and Chhad Bet], thousands of camels, goats, cows, buffalos, donkeys off and on come and graze ...". (Pak. Doc. B.329/Ind.)

15.02 A substantial proportion of the instances of exercise of "jurisdiction" relied upon by the Parties relate to Chhad Bet and/or Dhara Banni. They fall into different categories, being principally grazing and other similar activities of inhabitants of Sind, imposition by Kutch of grazing taxes (so-called panchari), measures taken to enforce the tax levies, and legal and factual repercussions of such enforcement activities.

15.03 India stresses that Dhara Banni and Chhad Bet were not included in Sind by Macdonald in his survey and queries why these areas, which allegedly constituted the main grazing grounds of the inhabitants of Sind in their vicinity, were not notified to Macdonald by the villagers concerned. In response, Pakistan states that Macdonald would have surveyed Dhara Banni and Chhad Bet, like the Allah Bund, if he had been properly informed that they were lands distinct from the Rann proper. (Official Records, 162nd Meeting, para. 5.)

15.04.1 India submits in evidence a document indicating that inhabitants of Paccham about 100 years ago took their cattle to Dhara Banni and other bets in the northern half of the Great Rann for grazing, that they "bring grass" and that at such time "[f]oreigners [had] no right to keep there their cattle". This statement appears in the second report of the Bhuj Vahivatdar of 1876 (Ind. Doc. A-66). India says that Dhara Banni (which includes also Chhad Bet) was thus a part of the territory of Kutch even before 1876. In Pakistan's submission the Report of the Bhuj Vahivatdar was made under instructions of the Dewan of Kutch to support the case that the entire Rann belonged to Kutch, a case was being prepared and hence the Report is unreliable. India answers by saying that the inquiry made by the Dewan was a straightforward inquiry.

15.04.2 India relies upon the scheme proposed by the Dewan of Kutch in 1880 for the salt preventive line, in which the Dewan suggested the establishment of a customs post at Dhara Banni, as showing the jurisdiction of Kutch. This has been considered in Section 6.04.

15.04.3 In oral argument, India stated that Chhad Bet, because of its geographical proximity to Thar Parkar, would naturally be the grazing ground for inhabitants of Thar Parkar and was too far away from Kutch to be the grazing ground for Kutch cattle. (Verbatim Records, pp. 12234/40.)

15.05.1 India claims that there is evidence of continuous exercise of authority on Chhad Bet by the Kutch Darbar after 1926. Pakistan denies that there is any evidence of genuine display of State authority by Kutch in any of the bets lying to the north of the median line in the Rann, and that there was total absence of Kutch from all parts of the

northern half of the Rann up to 1926 (1924). It asserts that the factual position on the ground was that the Sind Administration was exercising authority in the northern half of the Rann for all purposes. Pakistan submits that inhabitants of Sind always and from time immemorial grazed their cattle and camels in Dhara Banni and Chhad Bet and that it was acknowledged in Kutch that Dhara Banni and particularly Chhad Bet had always been the preserve of Sind and the main grazing ground for the inhabitants of the areas of Sind in their vicinity. (Verbatim Records, pp. 18096, 18081.)

15.05.2 India submits (Indian Statement 12) that it is not possible to fix with any accuracy the date when the people of Vingi and other villages in Thar Parkar District of Sind started grazing their cattle in Chhad Bet but that the earliest date would appear to be about 1843. India states that inhabitants of Sind did graze cattle on Chhad Bet up to 1956. (Official Records, 118th Meeting, para. 4.) India further states that Kutch authorities did not before 1926 levy any grazing tax on Sind people on Chhad Bet, and that up to that year, there was "no physical occupation [by Kutch] by way of a police post or anything" thereon. (Verbatim Records, p. 12373.) India adds that Kutch did not exercise any active jurisdiction over Dhara Banni and Chhad Bet before 1926. (Verbatim Records, p. 12224.) However, as noted above, India claims that there is evidence of continuous exercise of authority on Chhad Bet by the Kutch Darbar since 1926.

15.05.3 Aside from the positive submissions noted in Section 15.05.1, Pakistan argues in regard to the collection of panchari by Kutch in 1926 and thereafter that the actions were ineffective and that at least prior to 1944, "all these are non-genuine, imaginary transactions being put down for the sake of creating some record which might show that some jurisdiction is being exercised. But in fact nothing of the kind is being done". (Verbatim Records, p. 8657.) This is denied by India, which submits that the collection of panchari by Kutch was genuine and effective and made in good faith in territory acknowledged to belong to Kutch.

15.06.1 The earliest specific instance evidencing grazing in Chhad Bet relates to the years 1889 or 1890. According to the petition to the Commissioner in Sind made in 1926 by Sind Rajmahajans and Patels, which is quoted in Section 15.08.1, the inhabitants of their villages had some 36 or 37 years ago dug a big pond in Chhad Bet which had since been kept up by them. (Pak. Doc. B.54.) This pond was named after Patel Gul Muhammed Kapri, and is referred to also in documents of Kutch officials. (Pak. Docs. B.141/Ind. and B.221.) The same document refers also to a tank said to have been excavated by a villager named Rana Kapri.

15.06.2 Another document (Pak. Doc. B.51), dated 1917, also relates to what must in the geographical context be understood to be either Dhara Banni or Chhad Bet, or both. In that year, residents of villages Nahar Vero and Band Ramzan in Mithi Taluka addressed a petition to the

Collector of Thar Parkar asking that the Government remove sticks that had been put up by the Salt Department as they prevented access of cattle which used to graze "in the Rann upto 10–12 miles" during certain recent periods of famine.

15.07.1 Much emphasis has been placed by both Parties on documentary evidence relating to the first time that Kutch claimed panchari from inhabitants of Sind grazing on Chhad Bet. This evidence forms part of what has become known as the incident of 1926–27, being one of those occasions on which the boundary between Sind and Kutch was put in issue.

15.07.2 A communication from the Thanedar of Khavda in Kutch, dating from the beginning of 1926, stated that in Chhad Bet "people from the villages on the edge of Sind and Thar always graze their cattle". Chhad Bet, stated the Thanedar, was one of several "small islands [which] belong to the Honourable Darbar". It was proposed that "in the beginning... the management should be done by levying a tax of Panchari etc. in a nominal manner on the cattle belonging to the people of foreign territory, which come for grazing" and that "two peons from the staff of this place" be posted on Chhad. (Pak. Doc. B.127/Ind. [in Pak. Doc. B.289].) Upon receipt of this Report with an endorsement of the Revenue Commissioner, the Dewan of Kutch issued an order dated 25 February 1926 by which the Thanedar was authorised to "send his peon" and the following instruction was given:

> "If our people are willing to pay Panchari, take their written consent immediately and commence the administration of Panchari with tact and intelligence. It is appropriate first to take written consent." (Pak. Doc. B.129/Ind. [in Pak. Doc. B.289].)

15.07.3 By letter of 15 April 1926 (Pak. Doc. B.126/Ind. [in Pak. Doc. B.289]), the Thanedar reported to the Revenue Commissioner that two peons were kept on Chhad Bet. With reference to the instruction of 25 February 1926, the Thanedar stated that he had personally gone to Chhad Bet and that "in this Bet the cattle of Thar villages, about 1,000 to 1,500 graze day and night even now". He stated further, *inter alia*:

> "Amongst the owners of the cattle it was learnt on inquiry from those, who were present, that if a prohibitory order is not issued for grazing their cattle in the above-said bet, they showed their willingness even to pay Panchari in lump sum for the current year ending on Assar Sud 2.
>
> "And people of one or two villages have given written consent to pay Panchari in lump sum also. On inquiry from people of other two three villages, they also expressed their willingness to pay Panchari and demanded that there is famine in current years, therefore, Panchari up to Assar Sud 2 may be exempted by the Honourable Darbar by way of mercy, and having consented to pay from next year, their consent has also been taken in writing."

15.07.4 Two months later, the Thanedar sent a Report to the Dewan of Kutch, dated 8 June 1926 (Pak. Doc. B.130/Ind. [in Pak. Doc. B.289]), in which he stated that peons stayed in Chhad Bet "turn by

turn", and referred to certain items of expenditure for which sanction was asked. The Report stated, *inter alia*:

> "Cattle of Thar and Sindh always come for grazing inside the Rann in Chadd Bet, right up to Kunwar Bet and from Kunwar Bet after coming to Ukari further in the western limit. The persons who bring these cattle for grazing being totally wild, illiterate and of a rebellious nature, have not paid the levy of Panchari till now. They have been explained in some ways and in the current years the amount of Panchari for the inner portion of the Rann and from cattle owners coming to Rann Elkari has been recovered and this is Koris 144 from 10 persons for 61 heads of cattle for eight months. If this order is immediately enforced these spirited people will get excited and ready to revolt. For that reason the commencement of the administration has been done slowly. Because of the lack of speedy sanction for the expenditure for water, how much difficulty is experienced in the carrying out of work in the Rann can only be known to the person who does it."

15.07.5 On 24 June 1926, the Thanedar of Khavda sent a Report to the Revenue Commissioner in which he stated, *inter alia*:

> "From Assar Sud 3 Samvat 1983 (June 1926) watch has been kept in these bets so that nobody should bring cattle there for grazing without previous permission. Such public notices be printed in Sindhi language and distribution among villages on the edge of Thar. A draft of the public notice is attached herewith. There are no means whatsoever here in the Office for knowing to what extent is the boundary of this Rann, but on inspection of the site and on enquiries from old experienced people the real fact which comes out in the open is that of the Rann, the salty land belongs to Kutch and the sweet land belongs to Thar. On looking at the limits of the Rann locally, the salty land of the Rann extends upto the villages on the edge of Thar in the north and besides it, there is a cart track for going from Nagarparkar to Badin and along the cart track villages on the edge of Thar viz. Paneli Bandh and Vingi etc. are situated. A sketch map of this boundary prepared at a glance is attached herewith. It is requested that it may be seen and instructions are sought up to what extent we should regard (our) limits to be.
>
> "The cart track going from Nagarparkar Badin is on the road on the edge of the Rann and many people of Wagad come and go by this tract direct. So whether customs duty is to be collected from travellers passing on that road after search in connection with customs or not? The Sindhi people are totally illiterate and wild, therefore, in the beginning to carry on administration, a Thana of two camel-riders of Police be set up and watch up to the frontier of the Rann. They should oft and on accompany us within the limits of the Rann and act on our instructions. Further it is requested that a Firman (Order) may be issued that the Police Jamadar of this place may give us all needed help according to local demand." (Pak. Doc. B.131/ Ind. [in Pak. Doc. B.289].)

15.08.1 On 1 July 1926, Rajmahajans and Patels of Vingi and other villages of Diplo Taluka sent a petition to the Commissioner in Sind in which they stated, *inter alia*:

> "We must humbly and respectfully beg to lay down the following few lines of our request for your favourable Consideration.
>
> "We the undersigned Rajmahajans and Patels of Villages Vingi, Paboohar, Panelo, Jehangro, Butainoo, Bhund, Gangalao, Dilyacho, Lyari, Phator, Phuliano and other villages of Taluka Diplo dist: Thar and Parkar beg to state that our villages are near the Run (desert) of Cutch and from the very existence of British Govt: have been putting up in the above said villages and

all the time we had been taking away our cattle for grazing in the desert of Cutch about 8 miles distance from the boundary of Thar (which is called Char) for which we were not charged any Tax, from the very beginning: The Boundary of Thar is up to Kerdahi, Biria and Bamarala and the boundary of the Cutch State is about 12 miles away from the above said villages. Char is always a fertile place, where the green grass is available throughout the year, where we take away our cattle for grazing whether in famine or in Rainy season. This Char has been the cause of saving all the Cattle of these 20 villages.

"2. About 40 years ago this desert had been measured and the Boundaries had been fixed; we had rendered all the help which we could possibly give to the officers according to our poor circumstances. From that day forward we had not been giving any Tax for grazing our cattle:

"About seven days back Mr. Narainji Police jamadar of Khaoro came and personally told us that after these sixteen days nobody should bring his cattle for grazing in Char and if at all anybody comes for that purpose the cattle will be put in Khaoro Dak or the Tax will be levied according to the orders of his Highness the Rai of Cutch:

"Therefore we the Rajmahajans and Patels request your honour with a sanguine hope that Char which is only 8 miles from Thar Boundary may be allowed as it was before when no Tax was levied, and we had been living a happy life for saving our cattle.

"Our condition in Thar owing to the famine is very pitiable and we had been taking the Takavi the Govt. assistance for the famine stricken people for our livelihood and therefore we are quite unable to pay the Tax. If this Kabza is handed over to the State, then all the Cattle which goes there for grazing, and the product of Ghee and hides from which the Govt. charges two rupees per maund will not be allowed to pass from the state according to their strict orders to other Countries and thus we will be quite ruined and there will be no source for our maintenance.

"3. About 36 or 37 years ago we had dug a big pond in Char which is about six miles away from Thar Boundary and we have undergone the expense of about one thousand rupees, which has been shared between all the Rajmahajans and Patels and the state has not undergone any expense for that and even that pond is called after the name of our deceased Patel Gul Md. Kapri, and we also undergo the same expense for the ravages on the pond every year. Also a separate tank has been excavated by Rana Kapri which is about 4 miles away from the said pond. From these facts your honour, will be aware that we had been always going there for grazing our Cattle which is the only source for our livelihood.

"Therefore your honour will be graciously pleased to issue such orders very soon that we may kindly be allowed to graze our cattle without any Tax, and for that we all the Rajmahajans will pray for the Govt. and remain grateful." (Pak. Doc. B.54.)

15.08.2 The petition was forwarded by the Commissioner in Sind to the Collector of Thar Parkar, Mr. Henderson. Petitioners also submitted another application directly to the Collector, which is not, however, exhibited in the case. On the initiative of the Collector, an investigation was initiated on where the boundary lay between Thar Parkar District and Kutch. It appears from a Note made in the Office of the Collector (Pak. Doc. B.220), dated 6 September 1926, below an endorsement of the Deputy Collector of 2 September 1926 (which is not on record), that both petitions were forwarded to the Deputy Collector of Thar Parkar, who produced and submitted a Report of

the Mukhtiarkar of Diplo stating what the petitioners had told him. The Note states that:

> "He [the Mukhtiakar] is not able to trace out the boundary limits of the Cutch State and British Govt. from Govt. records. He has submitted the sketch. The petitioners show the boundary limit to be at the place marked by red lines. The taluka and district map show the boundary limit of Taluka Diplo to be at A–B. The places where the petitioners have been grazing their cattle are encompassed by red pencil and are situated in the middle of above said limits (in the Rann) i.e. between boundary limit of the taluka Diplo shown on the Taluka map and the boundary limit of British possession by the petitioners.
>
> "The petitioners have no self knowledge of the boundary limits shown by them to be at the places marked by dotted lines in red ink, nor is there any boundary mark separating the limits of the state and the British territory...".

The identification of the sketch map submitted and apparently prepared by the Mukhtiarkar (and possibly identical to one referred to in Pakistan Documents B.221 and B.222) has been in issue between the Parties. Pakistan submits that a copy of the sketch map in question is exhibited by Pakistan as Pakistan Map 94. India submits that the sketch map at Pakistan Map 94 cannot be the sketch referred to in Pakistan Document B.220. Pakistan's final position on this issue is that the original of Pakistan Map 94 was found in the relevant file but that it cannot be specifically said that it is identical to the sketch map attached to any one of the three documents. (Pakistan Map 128, prepared in 1938 with reference to the file under consideration here is commented upon in Chapter V.)

15.08.3 It may be noted that the villagers who submitted the petition quoted in Section 15.08.1 stated that all the 20 villages were situated in Diplo Taluka. A Report of the Deputy collector of Thar Parkar, dated 18 October 1927, and included in the same file, also stated "that the people at Char and Dero islands do not reside permanently but they reside only for portion of the year to graze their cattle. The births, deaths and epidemics are however recorded by the taluka office Diplo". (Pak. Doc. B.227.)

A map of Diplo Taluka of 1927 is exhibited as Indian Map B-23.

15.08.4 It may be observed that the petition of 1 July 1926, quoted in Section 15.08.1, indicated that inhabitants of petitioners' villages had grazed their cattle in the area referred to "from the very existence of British Govt.", i.e., since 1843. The Note in the Office of the Collector referred to in Section 15.08.2 stated that inhabitants of the villages had been grazing their cattle "since time immemorial". This expression – which recurs in a letter of the Collector of 1927 (Pak. Doc. B.224) – may have been used in the villagers' second application that was submitted directly to the Collector.

15.08.5 In October 1926, the Deputy Collector forwarded the file containing the correspondence on the boundary demarcation of 1875–76 (referred to in Chapter VIII, Section 1) to the Collector. Upon receipt

of it, the Collector addressed a letter to the Commissioner in Sind requesting information on whether the boundary had been settled after 1876. (Pak. Doc. B.16.) This letter was forwarded from the Commissioner's Office to the Superintendent, Land Records, in Sind (Pak. Doc. B.17) with the request "to furnish the required information with the aid of his maps and records". The Superintendent, Land Records, replied that:

> "...on comparison of the old deh maps 1873 with the office copy maps brought up to date in 1920 it appears that no change has taken place in the boundary limits between the British territory and the Cutch State along the border of the Thar Parkar District since the issue of Government Resolution, Revenue Department, No: nil dated February 1876". (Pak. Doc. B.18.) [The Resolution is referred to in Chapter VIII, Section 1.]

This letter was forwarded to the Collector for information. (Pak. Doc. B.18.)

15.08.6 The Deputy Collector submitted a Report on the question of the alignment of the boundary dated 5 February 1927 (but apparently sent to the Collector only on 5 August 1927), stating *i.a.*:

> "They say that this boundary was settled many years back but if such a settlement had taken place the boundary pillars must have been constructed as is always done where a settlement of a disputed boundary is made between the British Government and a Native State... In my opinion if any part of the Rann was included in the British territory it would have been shown in the Taluka maps of all the three Talukas of the Desert viz. Diplo, Mithi and Nagar Parkar. The whole of the Rann is a barren place and as there is no likelihood of its ever being made fertile neither the British Government nor the Cutch Darbar has taken an interest in it. If the people of the Desert have been grazing their cattle in a part of the Rann without payment of the fees to the Cutch officials it is no reason that the part of the land thus encroached upon must be considered as the property of British Government ...If a settlement has been made it will decide everything but if no such settlement has been made this dispute cannot be decided until the Cutch Darbar has been given an opportunity to have his say in the matter." (Pak. Doc. B.221.)

15.08.7 Upon receipt of the deputy Collector's Report referred to in Section 15.08.6, notes were made in the file in the Office of the Collector by members of its staff under date of 11 and 12 August 1927, reading as follows (Pak. Doc. B.223.)

> "The Dy: Coll. who has seen the Site has not been able to *ascertain the* accurate boundaries, as it appears from his personal observations recorded at Slip M.
>
> "Since this question is an important one such as to determine jurisdiction of the State and the British territory the Commr: in my humble submission be requested to move the State authorities to settle up the question in consultation with the Coll:
>
> "In view of the D.C's note marked with slip M and of the fact that Govt. as well as the Commr. in Sind have not thought it fit to settle the question since 1876, it may be dropped and the papers may be filed."

The Collector scribbled a pencilled note in the margin oppostie these notes, which reads in part as follows:

> "1. N... and ask the Supt. L.R. whether he means that the old Deh maps of 1873 & the office copies maps & brought up to date in 1920, actually show the boundary or not. If the former, to please let me know what it is.
>
> "...
>
> "3. In default of any information, we will continue to regard half the Runn as belonging to British & half to Cutch...".

With reference to these notes, the Collector recorded in the margin opposite them an interim order which has been quoted on many occasions in the proceedings before the Tribunal:

> "In this case Petitioners can be informed that they should not pay any fees, but tell the Cutch Jamadar to go to blazes!"

15.08.8 A letter such as suggested by the Collector was written to the Superintendent, Land Records. He stated in reply that "the old map of Sind of 1873 and the office copy map of Sind brought up to date in 1920 ...show the boundary between the British territory and the Cutch state". (Pak. Doc. B.226.) Pakistan submits that the maps exhibited as Pakistan Maps 95 and 96 are copies of the maps referred to by the Superintendent, Land Records.

A note made in the Collector's Office on the statement of the Superintendent observes that "[t]he maps practically show no boundary of the British territory & the Cutch State in the Runn of Cutch". (*Ibid.*)

15.08.9 The Collector also wrote to the District Superintendent of Police, Thar Parkar:

> "...to enquire whether investigation into the offences committed at Char and Dero islands situated in the Rann of Cutch to the south of Diplo Taluka is held by the British Police as stated by the residents of Makans Pabuhar and others. If so you will please let me know the authority under which it is done so". (Pak. Doc. B.224.)

The District Superintendent of Police replied that "[n]o offences committed at Char & Dero Islands appear to have been reported to the Police of Diplo Police Station". (Pak. Doc. B.228.) In the margin of this letter, the Collector noted:

> "I don't want to know if any offences have been reported, but whether these islands are in the Diplo P.S. limits any offences would be registered at that P.S. Tell the S.I. to submit a proper report." (Pak. Doc. B.228.)

No additional report does, however, appear to have been filed by the Superintendent of Police.

15.08.10 A final order was issued by the Collector to the Deputy Collector under date of 20/31 December 1927 (Pak. Doc. B.20), to the same effect as the interim order referred to in Section 15.08.7. With the final order, the file was closed.

15.08.11 In the submission of India, the Collector's order was "mischievous because it was directly contrary to the evidence which the Collector of Thar Parkar had before him" and "irresponsible because the Collector knew full well that, assuming there was a dispute, it was not

for him to decide where the boundary lay between Sind and Kutch". (Verbatim Records, pp. 14312–13/20.)

15.09.1 By a Resolution of 24 February-28 April 1926 (Ind. Doc. A-73, date in Ind. Tab. Statement 19), the Dewan of Kutch, acting upon a request of the Thanedar of Khavda, sanctioned expenditure of 1,500 Koris for excavating a tank in Chhad Bet and 500 Koris for digging a well. (The latter work was stopped in June or July 1926 when the water was found saline, as appears from a communication included in the same document.) Further provisions for a camel to carry water to Chhad Bet was made by the Kutch Dewan, and in September 1927, the Thanedar reported that the expenditure incurred on this account amounted to 653 3/4 Koris (Ind. Doc. A-74).

15.09.2 The Report of the Deputy Collector of Thar Parkar, dated 18 October 1927, which is cited in Section 15.08.3, contained a reply to the question asked by the Collector whether any grazing fees had been recovered by Kutch at Dhara Banni and Chhad Bet. The Deputy Collector stated that "[n]o grazing fees have up to this time been recovered by the Cutch State men". (Pak. Doc. B.227.) The previously cited Report of the Thanedar of Khavda of 8 June 1926 (Pak. Doc. B.130/Ind. [in Pak. Doc. B.289]) was to the same effect insofar as Chhad Bet was concerned (see Section 15.07.4 above). In a Report of 4 August 1927, the Thanedar, reciting that the Sind "spirited ignorant people get excited and ready even to revolt", stated to the Dewan:

> "And with great courtesy and intelligence, work is carried out with these people who belong to foreign territory. If people in spite of prohibition leave their cattle for grazing in these islands, then once or twice their cattle, should be brought in the Darbari pond and merely thus, the hardship will be minimised. But because the population is of foreign territory, no action has so far been taken as proposed above.
>
> "This matter relates to the rights of the border with foreign territory. So on this occasion one should be firm so that the right of the Honourable Darbar is properly looked after. But since no adequate arrangement has been made, the people of foreign territory have penetrated for a very long time". (Pak. Doc. B.132/Ind. [in Pak. Doc. B.289].)

15.09.3 A report of 1929 of a petty revenue officer to the Thanedar of Khavda states that in the three preceding years a total of 56-1/2 Koris were collected in grazing taxes. (Pak. Doc. B.133/Ind.)

India has produced extracts of account books maintained by the Thanedar of Khavda in the period of May 1927 to February 1956 (Ind. Doc. A-81). For Samvat years 1983 to 1985 (1927 to 1929 A.D.), these extracts record entries of receipt of grazing fees levied in Chhad Bet at the rate of 1/4 Koris per animal and month, and booked on eight occasions, in a total amount of 98 1/4 Koris.

15.10.1 India, while maintaining that the Kutch Darbar exercised jurisdiction over Chhad Bet continuously after 1926, does not submit in evidence any documents showing any actual or contemplated activities of Kutch in Dhara Banni or Chhad Bet in the intervening nine years from 1929 up to 1938. The account books referred to in Section 15.09.3 do,

however, record that in each of Samvat years 1990 and 1991, one stray camel belonging to residents in Sind was impounded and released against payment of 2½ Koris; in Samvat year 1992, the release of two stray impounded camels resulted in a recovery of 5 Koris.

15.10.2 A letter dated 14 June 1938, from the Revenue Commissioner of Kutch to the Thanedar of Khavda (Pak. Doc. B.134/Ind. [in Pak. Doc. B.289]), referred to the earlier recovery of panchari in Chhad Bet "for two or three years from foreign cattle", recalling that men of the Khavda Thanedar "used to keep a watch on Chhad Bet ...about ten years ago", and stated that "it is very necessary that Chhad Bet ... may remain in the administration of the Darbar". The Thanedar, in a reply dated 24 June 1938 (Pak. Doc. B.135/Ind. [in Pak. Doc. B.289]) recalled that in 1927, the related file had been sent to the Banni Tajvijdar and that "[s]ince then no action has been taken"; he added that "no income has been received up to date" and that "[f]or this we are not at fault which even your honour will not fail to see". He further discussed the difficulty involved in "establishing Government and preservation thereof" on Chhad Bet and stated that "if an eye is kept in the beginning on income and expenditure is to be incurred in relation thereto, considerable difficulty is likely to be caused in keeping alive the basic aim".

15.10.3 On 22 June 1939, the possibility of again levying panchar on Chhad Bet was discussed in a letter of the Administrator of Bhuj to the Dewan (Pak. Doc. B.139/Ind. [in Pak. Doc. B.289].) An order of the Dewan was issued to submit "a report of facts from the Banni Tajvijdar as to what steps should be taken so that proper administration of Chhad bet may be continued to be done by the Darbar there and also full Panchari be recovered". (Pak. Doc. B.141/Ind. [in Pak. Doc. B.289].) In response, the Tajvijdar, by a letter of 26 March 1940, stated, *inter alia*, with respect to the "big Bet, known by the name of Chhad":

> "Grass is produced in large quantity in this bet. On the northern side of this bet there are about four miles of salty land of the Rann. This is also the boundary of Kutch and after this on the Northern side of the Rann. There are the following villages of Thar adjoining Chhad Bet:
>
> "1. Panoli 2. Panelo 3. Kiyari 4. Illegible. 5. Khajurdi 6. Katharo 7. Thuwar cho 8. Bandh Mathani 9. Dhaliano 10. Udhanoo 11. Vingi 12. Chuna Lass 13. Tirar 14. Narpiyaro 15. Bandh Ramzan (illegible) 16. Deniu 17. Kangini 18. Libli 19. Mithadia 20. Nabhisar.
>
> "These above mentioned villages are of Milti and Diplo Talukas of District Tharparkar.
>
> "The people of these villages are mostly cattle owners. Wherever Chhad bet is near to them, these people send their cattle there for grazing in Chhad Bet and these people after grazing in Chhad bet go back for drinking water to the villages on the edge of Thar from where they had come.
>
> "It is seen that the people of foreign territory have assumed a form of administration on this bet and have for a long time established their foothold ...If some sort of beginning is to be made on this Bet, arrangement should

be made first of all for residential houses for residing there and for water so that the persons residing there may not have to undergo difficulties and they can accomplish their work with diligence.

"The owners of cattle coming to this Bet for grazing till now are wild and spirited. According to my understanding these people do not even have an idea about the authority of Kutch. There is no means of subsistance in the villages of Thar for cattle of these people except by coming to Chhad bet. But by setting up administration limited to our purpose the income will start coming by and by and after appropriate administration is started there is a possibility of really good income. But at present if in incurring expenditure, an eye is kept on income, then income may not accrue, and without expenditure administration is not possible. For this purpose it is requested that it is essential that at present the expenditure be incurred so that people of foreign territory be stopped or alternatively after being subjected agree to pay the levy."

The Tajvijdar maintained that "for arranging this administration ... full powers must be available", adding that

"An officer possessed of such civil, criminal, revenue and customs powers, to whom Chhad bet is only 26 miles from Khavda, has sent this correspondence towards Banni Tajwijdar stating that this be done by Banni Tajwijdar.

"In view of the fact that the area of Banni is vast and Chhad bet being far from Banni – from the records, it is not seen that any previous Tajwijdar of Banni ever agreed in writing as such to look after the administration etc. and these revenues of Chhad Bet."

However, the Tajvijdar concluded by stating that if the Khavda Thanedar was "not willing to take this up, then I shall submit a detailed report when called upon to do so, about the facilities required for taking possession of Chhad Bet ...". (Pak. Doc. B.141/Ind. [in Pak. Doc. B.289].)

15.10.4 The Thanedar of Khavda submitted a Report dated 7 June 1940 (Pak. Doc. B.136/Ind. [in Pak. Doc. B.289]) relating to "the subject of the honourable Darbar's boundaries, authority and revenues which are mis-managed and the idea is that the same should not lapse". He requested sanction of estimated expenditure to permit "that the income of the Honourable Darbar and his limits and authority may not lapse", remarking that "[o]ne should not keep an eye on what the present income is but the question is of beginning the administration". The request was endorsed by the Revenue Commissioner in a letter to the Dewan dated 19 June 1940 (Pak. Doc. B.138/Ind. [in Pak. Doc. B.289]), in which he observed, referring to Chhad Bet:

"This Bet is far on the north of Kutch and since there is no permanent staff of the State, Sindhi people trespass on it. If immediate steps are not taken, it is no wonder if in the course of time this bet may be considered to belong to Sind."

15.10.5 A Report of an unidentified official of Kutch, dated 6 December 1940 (Pak. Doc. B.140/Ind. [in Pak. Doc. B.289]), recommended that a thana be established on Chhad Bet as

"It is very desirable from political point of view that management should be maintained. The boundary between Sind and this State must have been decided. Therefore, there is no possibility of a question arising about the

> border and jurisdiction in this bet. Even then, when the people of foreign territory come into the boundary of the State, and do not pay the revenues of the State, which is a right of this State. Then this is, of course, a defect in the management of the state. For this reason it is necessary that a permanent Thana be maintained."

15.10.6 The Dewan of Kutch, under the command of the Rao, by an endorsement of 20 September 1941 sanctioned expenditure for the appointment of a Tajvijdar, two peons and three camel Sowars, estimated to amount to 280 Koris per month (Ind. Doc. A-75). The endorsement added that "[i]t does not seem necessary to sanction any new expenditure in the Police Department. The Police staff at Pachham should give assistance to Khavda Thandar when called to do so". On 31 May 1941, the Police Commissioner of Kutch had noted, however, that three constables and three camel Sowars were required to assist the Revenue Department on Chhad Bet.

15.10.7 A Report of a Tajvijdar of Chhad Bet, dated 3 November 1942, indicated that activities to levy panchari were then under way but stated that the people "do not pay heed to the authority of this place" and that they had threatened the staff. (Pak. Doc. B.142/Ind. [in Pak. Doc. B.289].) He added that "we have no police help nor have we licence for carrying arms". Two years later, in a letter to the Thanedar, dated 14 August 1944, the same Tajvijdar made a progress report (Pak. Doc. B.143/Ind. [in Pak. Doc. B.289]), reading:

> "With respects, it is submitted that we have often to visit Chhad Bet and other bets situated in the north of the Rann of Kutch in connection with our duty. In these Bets cattle owners of the villages on the edge of Thar come for grazing their cattle. We produce in this office those cattle on which we are able to lay our hands for the purpose of making proper arrangements therefor. In between, Chhad Bet is linked by Dhero Bet. There even, cattle owners bring their cattle for grazing. In addition to that, there are other innumerable small Bets, surrounding it. In the vicinity of these Bets are situated villages populated by British subjects. We have to go often on that side for work of Chhad Bet. Therefore, for our information and so that people belonging to these areas may not improperly enjoy possession of the Bets situated within the limit of the Honourable Darbar and for that reason to watch the same and to supervise properly all the Bets falling into our limit and to make proper arrangement of the cattle coming for grazing therein, it is particularly necessary to have a map of our boundary of the Northern Rann. For the above reason, it may be arranged that the map of the Northern Rann as well as all the papers relating to Chhad Bet be supplied to us immediately."

15.10.8 In a Memorandum of 23 November 1944 (quoted in Section 15.11.3 in another respect), from the Thanedar of Khavda to the Revenue Commissioner, it was observed that "the members of the staff of Chhad Bet do not even carry arms", and it was stated on the activities in Chhad Bet that "[w]henever men of our staff can lay their hands on the grazing cattle of these persons they bring these cattle here. Later on owners of these cattle present themselves here and take back their cattle after paying Panchari ... Our administration of Chhad Bet is carried on in this manner". (Pak. Doc. B.145/Ind. [in Pak. Doc. B.289].)

15.10.9 The account books of the Thanedar of Khavda (Ind. Doc. A-81) cited in Section 15.09.3 show that in the years 1938 to 1942 (Samvat 1994–99) recovery of a total amount of 67½ Koris was made as a result of the impounding of cattle grazing on Chhad Bet without payment of panchari. For 1943 (Samvat 2000) the figure was 289¼ Koris, and for 1944 (Samvat 2001) 204½ Koris. In 1945 (Samvat 2002) the entries relate to the impounding of cattle by the Ijardar of Chhad Bet and will be referred to below in another context.

15.11.1 On 16 November 1944, a First Information Report was registered by the First Class Magistrate, Diplo (Pak. Doc. B.146). In it, a resident of village Bandho, Taluka Diplo, reported that on 14 November he and three others were grazing their camels "in the Char". They were then approached by a Kutch Dhru with a mounted party of five persons who stated that the territory was Kutch and inquired why they grazed there. The informant stated that after replying that it was British territory, and that they had never been prevented from grazing, his companions were arrested and taken to Khavda, while he himself was tied and left on the ground. The Report registered an offence of "wrongful confinement and beating" and stated that investigation had begun. (Pak. Doc. B.291.)

15.11.2 On 22 November 1944, the Head Constable of Baliari, Diplo, presented a Memorandum to the Sub-Inspector of Police at Khavda, stating that "[t]his crime has taken place within our boundary in Rann Chhad", and requesting that the arrested villagers be produced before him. In his reply, dated the following day, the Kutch Sub-Inspector stated that the arrested persons "had let loose their cattle in Chhad Bet situated in the jurisdiction of the Kutch State and caused improper damage in Chhad Bet in the limits of the Kutch State", that the Revenue Court had, upon admission having been made by the accused, decided that panchari were due, that permission to defer payment thereof had been given, and that the arrested persons had thereupon been released after giving surety for the payment. (Pak. Docs. B.147/Ind. and B.149/Ind.)

15.11.3 The facts stated in Section 15.11.2 were reported by the Thanedar of Khavda to the Revenue Commissioner of Kutch by letter of 23 November 1944, the last paragraph of which reads:

> "The main dispute is about the boundary. It has come to our notice, that it is impressed upon the minds of the people of the villages of Thar by the local authorities of that place, that the limits of Chhad bet do not belong to this sacred State and from this alone they have formed the belief and are opposed to paying Panchari. And they freely graze their cattle in Chhad bet and take undue advantage. There is a map prepared for this boundary. A copy of the said map has been called for from here. But it has not been received till now. It is very much needed on such occasions. Therefore request is made to make arrangements for immediate dispatch of the copy of the map to us." (Pak. Doc. B.145/Ind. [in Pak. Doc. B.289].)

15.11.4 It appears that the case proceeded in Sind, and on 18 August 1945 the First Class Magistrate of Diplo wrote to the District Magistrate of Thar

Parkar, stating that as a *prima facie* case was made out against the accused Kutch officials, and as all of them were reported to be in Kutch, it was requested that the Kutch authorities be moved to surrender the accused to the Court under the Extradition Act at a very early date. (Pak. Doc. B.150/Ind.) (India has stated that the reference to the Extradition Act may have been an error as it did not apply between Sind and Kutch; extradition matters were dealt with on an *ad hoc* basis (Official Records, 119th Meeting, para. 3)). On 8 September 1945, the request was forwarded by the District Magistrate to the Secretary to the Resident for the States of Western India, Rajkot, with a request to make early arrangements for the surrender of the accused to the First Class Magistrate, Diplo.

15.11.5 With an endorsement of 20 September 1945 from the Secretary to the Resident, a copy of the letter of the District Magistrate of Thar Parkar was forwarded to the Dewan of Kutch "with the request that if the Cutch Darbar have no objection, arrangements may kindly be made for the surrender of accused ...to the First Class Magistrate, Diplo, for trial". (Pak. Doc. B.151/Ind.)

15.11.6 The Kutch Government, upon receipt, two days later dispatched the request to the Gujarati Office "for appropriate action". On 24 September, the Chief Secretary forwarded it to the Chief Judge, noting that "[i]f the accused persons are in the limits of Kutch, they may be apprehended, the accompanying *prima facie* case papers be seen ...". An order to such effect was issued by the Chief Judge on 6 October, which was followed by requests of the Thanedar of Khavda to the police to arrest the accused for investigation. At the end of October 1945, an order was issued by the Khavda Police Jamadar to arrest and produce the accused and to report. (Pak. Docs. B.154/Ind., B.155/Ind., B. 156/Ind., B. 157/Ind., B.158/Ind., B.159/Ind.)

15.11.7 On 30 October 1945, a note marked "II Reminder" of the request dated 17 September 1945 was sent from the Assistant Secretary to the Resident of Baroda and for the States of Western India and Gujarat to the Dewan of Kutch, requesting an early reply. (Pak. Doc. B.153/Ind.)

15.11.8 Under date of 16 November 1945, the Revenue Commissioner of Kutch sent a Report to the Dewan recommending that the request for extradition be refused as the action related to the discharge by Kutch officials of their duties in Kutch territory. The report stated, *i.a.*:

> "Chhad bet is within Kutch territory and as its 'vahivat' was done loosely, strict steps were taken from there to do proper 'Vahivat' and make recovery of revenue strictly. Accordingly, Chhad bet staff took strict steps and impounded the animals of the people of villages of Tharparkar on the opposite side of Chhad bet as they were grazing there without payment of grazing fees to the Darbar. They have therefore made up a false case against Darbar servants who were doing proper discharge of their duty and collecting revenue. The Chhad bet staff produced before Ra. Khavda Thandar those graziers who did not pay grazing fees and they have given agreement before

Ra. Thandar. Later on after going there they have started this mischief. That is the position. This mischief is made in order to intimidate Darbar servants by those who were stopped from doing harm to the Darbar revenue and entering in Darbar jurisdiction. In these circumstances, you too will not think it appropriate to grant the extradition and hand over the Darbar servants. Therefore you may call for all papers, go through them carefully and kindly send appropriate reply to the Agency.

"Not only this, but it is necessary to address the Sind Government through the Agency that the Sind Government may notify to villagers of the concerned villages in Thar Parkar situated opposite Chhad bet that they should not bring their animals in Chhad bet without payment of the usual grazing fees to the lessee. If this is not done and those village people enter Kutch Darbar territory and do damage to revenue, Darbar staff at Chhad bet and the lessee will impound their animals and hand them over here. Such animals will be sold by public auction and proceeds will be credited to the respected Darbar. This fact is submitted for information and necessary orders as may be deemed proper may kindly be passed." (Ind. Doc. A.-78.)

15.11.9 The Police Commissioner of Kutch on 6 December 1945 submitted a Report to the Dewan endorsing the recommendation of the Revenue Commissioner, stating *i.a.*, that:

"...it is clearly seen from the rough sketch, i.a., that: the Khavda Jamadar that the place where these people's cattle were grazing and were caught is the central portion of Chhad Bet. Therefore in this respect (in) the map of this State wherein Chhad Bet belongs to this State and persons collecting grazing dues are Darbar servants – on this basis the case should be treated as not true and further writing (letter) may kindly be sent to close it; that is our opinion which may be noticed". (Ind. Doc. AAA-7.)

Referring to this Report, the Deputy Secretary of the Kutch Darbar, in a Note of 14 December 1945, made the following order:

"It is stated above that the people from there had committed the offence in Chhad Bet within the limit of here, and after making a false complaint there, a false case has been made on people from here. Forwarded to the English Office for appropriate action for writing (sending) a reply after noting the facts from it." (Ind. Doc. AAA-7.)

15.11.10 The only further document relating to the extradition case which has been produced in evidence is a note marked "IV Reminder", dated 25 February 1946, in which the Assistant Secretary to the Resident at Baroda and for the States of Western India and Gujarat requested an early reply to the request for extradition of 17 September 1945.

15.11.11 Pakistan submits that on the day of the partition of the sub-continent, the demand for extradition of the accused officials of Kutch was still pending. (Pakistan Counter-Memorial, para. 29.)

15.11.12 India stresses that the endorsement of 20 September 1945 referred to in Section 15.11.5 contained the words "if the Cutch Darbar have no objection". India argues that the initial actions taken by Kutch before submission of the Reports of the Revenue Commissioner and the Police Commissioner related only to investigation and did not constitute measures of compliance with the request that were later reversed. India further submits that, following the Note of the Deputy Secretary of the Darbar referred to in Section 15.11.9, a reply, presumably denying the request for extradition, must have been sent

to the Resident at Baroda and for the States of Western India but that a delay may have occurred which would explain the fourth reminder from that office dated 20 February 1946. In India's submission, therefore, the demand for extradition was not pending on the day of partition. (Indian Final Memorial, p. 13; Verbatim Records, pp. 11294–301.)

15.11.13 In Pakistan's submission, the fact that the file which contains the reminders does not contain any answer to the request for extradition "is actual positive proof of the fact that no reply was sent, rather than an inference only". (Verbatim Records, pp. 8806/15.)

15.12.1 India places reliance, as an instance of exercise of State authority by Kutch, on a lease for grazing granted to Node Sadi Rau by the Kutch Darbar on 18 July 1945. (Ind. Doc. A-76.) The lease comprised Chhad Bet, Dhara Banni and an area known as Pirol Valo Kun. (On Pirol Valo Kun, see Section 15.12.4.) Under the lease, the term of which was five years, lessee undertook to pay a total of 15,000 Koris. He also undertook to "catch and drive into Khavda cattle pound animals which graze in these areas without payment of grazing fees", while lessee would "get grazing fees and less on this account". A total of eight men were to be provided to lessee during the first year at the expense of the Darbar, lessee was to maintain account books "[i]n order that proper 'Vahivat' [b]e done", and was to be provided with a metal badge indicating State authority. The lease further provided that "[d]uring the course of collection of grazing fees from persons outside Kutch territory if there is any criminal cases such cases should be defended at Darbar cost". Lessee, in a Report dated 2 October 1948, stated that "[t]he Ijara of these Bets was given for the reason that it is said that the Rann belongs to the State of Kutch, but that there is no administration of the same ... (Pak. Doc. B.328/Ind.)

15.12.2 India relies upon the fact that during the period of the lease to Node Sadi Rau, he used to impound the cattle grazing at Chhad Bet without payment of grazing fees and forward the cattle to Khavda; the owners of the cattle used to come over to Khavda and apply for the release of the cattle after payment of the grazing fees and penalty (cf. on the amount of the latter Section 15.12.5 below). Lessee also used to make reports about the impounded cattle. India has produced a list of 72 available applications from persons whose cattle were impounded and reports of the lessee; India has also produced some of these applications and reports in original by way of illustration. India has also submitted evidence to show that the lessee had requested and was granted a loan of 4,000 Koris for the purchase of a motor vehicle and relies upon account books of the Khavda Thanedar which contain entries of recovery of the loan in instalments (in the amount of 1,400 Koris for 1946–47). (Ind. Docs. A-77 and A-81.)

15.12.3 In Pakistan's submission, Kutch hereby embarked upon a "scheme of engaging a private person with the licence to terrorise the inhabitants of Sind and to extort from them whatever he could". The lease itself

is said "not [to] represent a genuine transaction". (Pakistan Counter-Memorial, para. 196 (viii) 30.) A document filed by India indicates that the lessee met with difficulties as "people from Thar and Sindh often make murderous attacks on us with a view to killing us". (Ind. Doc. A-77.) Pakistan introduces in evidence a number of Reports of the lessee to Kutch authorities which describe the resistance with which he was met. One such Report to the Thanedar of Khavda of October 1945 reads:

"... Thereafter Khas Khel Juma Saheb of Vanoi which is under Wagur came here from Thar. He found on the way that in Dhera Banni Bet, some men of the population of Thar accompanied by two Police constables of the Thar Police were grazing cattle and a message was conveyed to the Khavda Police of Your Honour to the effect 'that Chhad Bet and Dhera Banni are within the limits of the British Government and hence the subjects of that place graze their cattle therein and if either the Ijardar or the Police come here, they will regret it'. These facts were revealed by the said Khas Khel Juma Saheb in person to the Honourable Head Clerk Bhailalbhai, the Khavda Police and myself, on the day you went on district tour. To ascertain these facts, I started on the night of Aso Sud 13, Thursday – for Chhad Bet with the Darbari peons of Chhad Bet and my employees all numbering 13 and we reached Chhad Bet in the morning of Aso Sud 15 and on inquiry found that approximately 300 cows and 212 camels of the villages of Thar were grazing in the Bet. We held these cattle and the peons stood up so as to stop the cattle from running away and the rest of my men got busy in preparing refreshment and food. Suddenly there was sound of gunfire and, on hearing this, we stood up. Meantime, the people of the villages of Panelo, Paneli, Bandho, Kahiyaro, Bandh, Mithi, Vani and Char Chapro etc. of Thar, numbering approximately 200 to 250, all armed with weapons, came and stood against us. Three of these men went near the peons and fired rounds in the air and thereby made the cattle run in the direction of Thar. In this manner, as we saw so many armed people, we felt afraid and sat down. These persons were riding about 80 to 100 horses and camels. The remaining persons were on foot. These people threatened to beat us against the law and wrongfully confined us till 5 o'clock in the evening and having scared the cattle, made them run towards Thar.

"Thereafter one Haji Jam Dhodha Khan, a Lundh of village Thuvar Cho of Thar came to us and said that 'all these persons of the entire district of Thar have collected and we, the people of all the villages, have come with a united determination not to pay Panchari, since the State of Kutch has no right whatsoever in Chhad Bet and other Bets, and our cattle have always grazed (therein). Now if you wish to save your life, don't come again in Chhad Bet in the capacity of an Ijardar. On this condition, we shall release you and your men. Otherwise, there are men of the Thar Police also with me, and you will be killed, and not a sign will remain in the Rann of your existence'. On this, to save our lives, we accepted what they said. On this, the marginally noted men from those who had come, remained with us to drive us out of the Rann and the rest went towards Thar... Some of these men had even official (Sarkari) guns and from this it seems the Police of Thar must be with the people of Thar, which facts I declare... Apart from this, I have given a written memorandum to Lundh Dhodakhan Haji Jam of Thuvar Cho shown at No. 11 undertaking that we shall not enter Chhad Bet and authorizing him to look after, as my man. This (memorandum) was given to assure existence of evidence that he was present at the time the above dispute took place...

"The facts being as above, the request is that the people of all the villages of Thar District graze their cattle in very large number in the aforesaid

> Chhad Bet and Dhera Banni Bet. So in this matter, if appropriate arrangements are not made immediately, no one will pay Panchari properly... Because, if the authority of the Kutch State is established in these Bets, the Hon'ble Darbar will also get income of lakhs of Rupees... my request is that Panchari be recovered." (Pak. Doc. B.327/Ind.)

Other Reports of the lessee recite the difficulties met with and request the assistance and support of Kutch authorities. Still other documents, dated at the end of 1945 or the beginning of 1946, indicate that lessee had then ceased to visit Chhad Bet and had started without authorisation to extort payments from travellers. Another Report of lessee, dated November 1948, thus more than one year after Independence, stated:

> "...at present, people of Thar for purposes of looting come down to Chhad Bet and other bets. They are looting very much. These cases are going on in village Mithi of Thar limits. Police of Thar arrest and take away after catching within our limits. The offence takes place in our territory of Chhad Bet. It appears that at present people of Thar consider Chhad Bet and others bets as their own and are ready to make breach of peace with me. On account of fear, our police do not accompany me to Chhad Bet. The climate is such that they have, in real manner, prepared papers against us...". (Pak. Doc. B.162/Ind. [in Pak. Doc. B.289].)

15.12.4 The area of Pirol Valo Kun, which was comprised in the lease of Node Siad Rau, in Pakistan's submission forms part of what Pakistan refers to as the "upper lands in dispute". The area, which is described by India as grass land, is marked on the sketch exhibited as Indian Map B-1 as situated south-east of Kanjarkot; it does not appear on any other map on record. In a Report made in April 1946 by Node Sadi Rau's sons to the Thanedar of Khavda, the area is said to be "near Ding in the vicinity of Rahimki Bazar". (Pak. Doc. B.336/Ind.) A further statement on the geographical location of the area is provided in a Report of the lessee in which the area is said to be situated at 120 miles from Khavda.

The first Report in which mention is made of Pirol Valo Kun is one of December 1945 in which it is urged that a thana be established on it, as well as on Dhara Banni and Chhad Bet. In their Report of April 1946, quoted above, the sons of Node Sadi Rau reported that they had never before that time gone to Pirol Valo Kun. In July 1946, the Thanedar stated in a Report to the Revenue Commissioner of Kutch that "this Pirol Walo Kun has never been administered at all" and recommended that a thana be established "in order to start administration"; he requested that two policemen accompany the peons "on the frontier so that there may be impression of authority of this State on people of foreign territory". (Pak. Doc. B.335/Ind.) In a Report of the lessee of December 1946, the following statement appears on Pirol Valo Kun:

> "...[it] is at a distance of about 30 Gaus from here and coming and going, it is a distance of 60 Gaus and the animal cannot travel for one day there. Therein, people of Thar and people of Sind collect against us in large numbers in the matter of guarding the aforesaid bets and try to make murderous attacks. Therefore, we cannot stay overnight in Pirol Walo Kun

> and it is not possible to make a journey of 60 Gaus during one day for the animal". (Pak. Doc. B.160/Ind. [in Pak. Doc. B.289].)

15.12.5 The account books of the Thanedar of Khavda show that, up to and including the year of Independence, the following amounts were recovered from Sind inhabitants for release of cattle impounded by the Ijardar Node Sadi Rau: in 1945 (Samvat 2002) 49½ Koris, in 1946 (Samvat 2003) 615 Koris and in 1947 (Samvat 2004) 282 Koris.

15.13.1 India relies upon the various activities of Kutch relating to the collection of panchari "as administrative acts evidencing the existence of jurisdiction". India stresses that "[t]hroughout the British Government made no protest to the Rao of Kutch. Undoubtedly the Rao was purporting to do things in what be believed to be his own territory ... It was for the British then, who must have known ...to have protested about what was in fact a trespass by Kutch on British territory". (Verbatim Records, p. 12252.)

15.13.2 Pakistan, conversely, argues that the Rao of Kutch never complained to the Paramount Power about the resistance his administration was met with by the population and by Sind police and Sind functionaries:

> "Had it been really a fact that the land had been definitely and clearly acknowledged to be the territory of Kutch by the paramount Power, the Rao would have lost no time in complaining to the paramount Power in 1927 that its subordinate functionaries in Sind were flouting its declarations and were obstructing and frustrating his efforts in administering his own territory. The Kutch files show how the Prime Minister of Kutch, that is, the Dewan of Kutch, and the Revenue Commissioner of Kutch were taking an interest in these efforts, and how they were kept informed of the plain refusal of the people and the Administration in Sind. They, however, took no steps whatsoever to complain either to the Sind authorities or to the Government of Bombay or to the Government of India." (Verbatim Records, p. 18396.)

15.14 The Note made in the Office of the Collector of Thar Parkar, referred to earlier, stated that petitioners had informed him:

> "That they pay tax of Rs. 2 per maund of ghee [milk products] exported from Thar Parkar lying to the east of Dhoro Naro. And therefore no other grazing fee is charged on them. That it will be hard for them to pay both grazing fees to Cutch State and ghee tax to British Government." (Pak. Doc. B.220.)

No other evidence on record shows whether, when and to what extent such a tax was levied in Sind, nor in particular whether it may be said to have a connection with territory lying outside the boundary claimed by India, such as Dhara Banni, Chhad Bet or Pirol Valo Kun. The tax is characterised by Pakistan as an "indirect tax on grazing". (Verbatim Records, pp. 18237/40–1.)

15.15.1 India states that after the expiry of the lease of Node Sadi Rau, Chhad Bet was leased jointly to two other persons – Sama Ibrahim Suleman and Sama Jusal Kesar. There are entries in the account books of the Khavda Thanedar regarding payments made to these lessees. Continuation of their lease from 1 August 1955 to 31 July 1956 was ordered

by the Collector, Kutch, in a letter to the Mahalkari, Khavda, of 30 July 1955.

15.15.2 Pakistan submits Reports of the successor lessees of 1957 in which it is stated that collection of panchari by them was discontinued when military forces took possession of Chhad Bet in 1956.

15.16.1 According to India, in 1948–49 there was a fodder famine in Kutch, whereupon the Kutch Darbar decided to bring grass from Chhad Bet. A contract was given to one Lodha Harpal Ghasiram of Rajkot to press bales of grass at Chhad Bet and he was paid Rs. 6,000 initially for purchase of wire and payment to labour. A postcard written by Lodhar Harpal to the Forest Officer in the matter later, on 20 February 1949, is also produced by India.

15.16.2 Pakistan submits in regard to this instance that it relates to a period of time when the boundary was disputed and that as such it is of no consequence, that in any event the proof (being assertions made on a postcard) is insufficient, and that the instance is "just a paper transaction".

15.17 Pakistan relies upon a diary entry in 1951 of a Customs Superintendent, apparently stationed at Badin, which states "that the previous practice of issuing permits allowing the animals to graze in the Runn may be continued ...". (Pak. Doc. B.85.) Another such entry by the same official, made in 1952, which is relied upon by Pakistan, contains the following statement:

> "At Vingi more Cattle Grazers have come from Nagarparkar for grazing their cattle in the Runn opposite Vingi outpost. They were guided to take permits for grazing as for allowing their cattle to go in the Runn towards India." (Pak. Doc. B.89.)

15.18 Pakistan cites in evidence four post-Independence prosecutions by Pakistan for offences committed at Chhad Bet or its surroundings between 1952 and 1955. On 24 April 1952, the First Class Magistrate, Diplo, convicted a man for illegal entry into Pakistan; he had been arrested when "coming to Pakistan limits from Charbet side Taluka Diplo". On 30 October 1953 three residents of Kutch were arrested at a place situated "seven miles from the Customs line" by an official "patrolling in the Rann of Kutch"; the accused were convicted. India states that the latter incident may have taken place in the surroundings of Chhad Bet. A similar case of 1954 relates to conviction of smugglers arrested "in Charbet at a place six miles beyond the customs line". Again, in 1954–55, the goods of smugglers were seized (and later forfeited) "near Chhad Bet about six miles inside the Rann".

15.19 India relies upon 12 instances occurring in the years 1958 to 1964 in which accused persons were prosecuted and in some cases convicted in Indian courts for violations of Indian Passports Rules at Chhad Bet (cf. Section 13.01.1). In regard to these instances, Pakistan stresses the fact that India does not rely upon any earlier prosecutions of offenders against Indian Passport Rules at Chhad Bet.

15.20 India relies upon entries in the Khavda Police Station Crime Register for 1956 which seem to indicate five prosecutions of different persons for offences against the Indian Penal Code committed at Chhad Bet. It may be noted in this context that India stated that the Kutch (Indian) courts, before as well as after 4 May 1948, could, without special permission, try offences committed by Kutch (Indian) nationals outside Kutch (Indian) territory. (Official Records, 124th Meeting, para. 4.) The entries in the Crime Register do not indicate the nationality of the accused.

Pakistan submits in regard to those instances that it is significant that the only claims made by India regarding the trial of any alleged offences committed on Chhad Bet relate to the period after 1956.

16. *Karim Shahi Bet*

16.01 In the western part of the disputed territory, apparently not far north of the 24th parallel, lies a bet called Karim Shahi Bet. India maintains that the bet lies as depicted on its sketch exhibited as India Map B-1. (Indian Final Memorial, p. 4.) Pakistan maintains that the position of Karim Shahi as shown in Indian Map B-1 is about four miles north-east of its correct position, which in Pakistan's submission, as ascertained from local officials, is as shown on the Pakistan Jurisdictional Map. (Pakistan Counter-Memorial, para. 28, Pakistan Final Memorial, Annex P, para. 15.)

16.02 Pakistan introduces in evidence an instance of 1951 in which a resident of Kutch State was convicted by a Pakistan court for theft of a camel and was sentenced to 12 months' imprisonment. It appears that the accused had stolen the camel from a resident of Sind who was grazing it "in the jungle". The owner, accompanied by Pakistan police and customs officials, pursued the thief and caught him at Karim Shahi Bet.

16.03 Pakistan also introduces in evidence documentation relating to eleven instances in the years 1951 to 1955 analogous to those dealt with in Section 12.05. They relate to patrolling to or at Karim Shahi, and arrests made thereon by Pakistan Customs staff of persons accused of violating Pakistan customs regulations.

One of these instances is the following. On 30 August 1952, some cattle grazers holding grazing permits "opposite the Ludia outpost slowly moved in the Runn and succeeded in crossing the Indo Pak border". On the following day the customs staff at the outpost were apprised of the exporting of the cattle. The Report continues:

> "The staff reached Karim Shahi and examined the spot and found out that most of the animals had died in the marshy 'Kharis' while attempting to cross the frontiers. They however succeeded in apprehending the number of cattle seized in the item of seizure which could not be exported. The customs staff secured the cattle after drawing necessary Mashirnamas and brought them to Rahimki Bazar." (Pak. Doc. B.76.)

16.04 India relies upon 11 instances occurring in the years 1952–64 in

which accused persons were prosecuted, and in many cases convicted, in Kutch courts for alleged violations of the Influx from Pakistan Act, the Foreigners Act, 1962, or Indian Passport Rules. The illegal entries into India are stated to have taken place at Karim Shahi Bet (cf. Section 13.01).

16.05.1 Pakistan introduces in evidence extracts from a diary of a Pakistan Superintendent of Land Customs for 23 October 1952. The various entries for this day mention a conference with a Captain of the Sind Police Rangers who stated that he was sending patrol parties up to Karim Shahi on alternative days. An hour later, the Superintendent met with a Director of Anti-Smuggling and they went by car, together with the Police Captain, to Ding and Karim Shahi. The following note is made in the diary of the Superintendent on the conversation which apparently took place in the car:

> "The position of Karim Shahi was discussed. This little greeny spot is in the middle of the Runn and according to the version of Bharat [India] they state that it belonged to them. but the Customs Staff and the S.P.R. sepoys visit this place on patrols. The Runn between Dhing and the Bharat Border is about 55 miles. Our patrols go up to 25 to 35 miles in the Runn and the patrols from Bharat also sometime come up to this place. The present presumption on which patrols are carried; is that out of a total breadth of 55 miles the customs staff could go up to 25 miles leaving 25 miles for the patrols by Bharat and treating the balance of 5 miles in between as no man land." (Pak. Doc. B.100.)

16.05.2 India states in reply to this document that, according to the Pakistan Superintendent of Land Customs, the position that out of a total breadth of 55 miles the Pakistan customs could go up to 25 miles, leaving 25 miles for patrols by India, and treating the balance of five miles in between as no man's land was "the present presumption on which patrols are carried". India adds that this is a sort of arrangement of convenience or a presumption. It may be that India had many sides to look after, it was settling down after partition and therefore it could be that no particular notice was taken of something happening in a particular place.

16.06 Pakistan introduces in evidence a Diplomatic Note of the Indian Ministry of External Affairs to the High Commissioner for Pakistan in India, dated 28 July 1955, in which reference is made to an arrest of a Pakistan armed excise party (Pak. Doc. B.105). The party consisted of four men. The Indian Note states that the men "crossed the Kutch Pakistan border near Karimshahi into Indian territory on 3rd November, 1954 . . .". They were arrested and were later convicted by a Kutch court under the Passport Act, 1950, and two of them also under the Indian Army Act. Pakistan relies upon this Note as an admission by India that at the relevant time, the border between India and Pakistan lay near Karim Shahi.

India argues that this instance is a trifling matter, the "border near Karimshahi" may have been intended to mean, like the Baliari Rann, that part of the border which is opposite Karim Shahi, that part of the

border which is nearest to Karim Shahi; even supposing that when it is said "border near Karim Shahi" border in the vicinity is meant, the Note was written long after the dispute had actually arisen and when a long diplomatic correspondence was being carried on between the two countries and it cannot affect or destroy all that had occurred before and abandon the contention made up to then and subsequently that the border ran elsewhere. Each side in that correspondence was contending that the border lay in a particular place. The statement in the Note could not be understood as a reversal of the position consistently taken by India throughout the seven years during which the correspondence was exchanged. (Verbatim Records, pp. 12163/70, 13003–11.)

India seeks to distinguish the words used in the Note from the oral statement made by the Minister for Foreign Affairs of Norway, Mr. Ihlen, which was termed the "Ihlen declaration" by the Permanent Court of International Justice in the Legal Status of Eastern Greenland case (Judgement of 5 April 1933, *P.C.I.J. Reports*, Series A./B., No. 53, at p. 37). In that case, the Court noted that the United States on 4 August 1916 had made a declaration to the effect that the United States would not object to the Danish Government extending their political and economic interests to the whole of Greenland (*ibid.*, pp. 35–36, 56). On 12 July 1919, the Danish Minister at Christiania received instructions to convey to the Norwegian Minister for Foreign Affairs the following message: a Committee had been consitituted at the Peace Conference "for the purpose of considering the claims that may be put forward by different countries to Spitzbergen"; the Danish Government would be prepared to renew before this Committee an unofficial assurance to Norway that Denmark would raise no objection to Norway's claims upon Spitzbergen. The Danish Minister was also to state "that the Danish Government had been anxious for some years past to obtain the recognition by all the interested Powers of Denmark's sovereignty over the whole of Greenland and that it intended to place that question before ... [said] Committee". The Danish Minister was to draw attention to the declaration of the United States of 4 August 1916 and was further to say that the Danish Government counted on the Norwegian Government not making any difficulties with regard to the extension by the Danish Government of their political and economic interests to the whole of Greenland (*ibid.*, pp. 36, 57).

The Danish Minister at Christiania delivered his *démarche* to Mr. Ihlen at a meeting on 14 July 1919. Mr. Ihlen replied only that "the question would be considered". At a subsequent meeting on 22 July 1919, Mr. Ihlen, after informing his colleagues of the Norwegian Cabinet, stated to the Danish Minister "that the Norwegian Government would not make any difficulties in the settlement of this question". These words appeared in a minute drawn up by Mr. Ihlen. The Danish Minister reported to his Government that the phrase used

by Mr. Ihlen had been that "the plans of the Royal [Danish] Government respecting Danish sovereignty over the whole of Greenland... would meet with no difficulties on the part of Norway." (*Ibid.*, pp. 36, 58).

Denmark relied upon the Ihlen declaration as a recognition by Norway of an existing Danish sovereignty in Greenland. The Court did not accept this contention, stating that:

> "A careful examination of the words used and of the circumstances in which they were used, as well as of the subsequent developments, shows that M. Ihlen cannot have meant to be giving then and there a definitive recognition of Danish sovereignty over Greenland, and shows also that he cannot have been understood by the Danish Government at the time as having done so."(*Ibid.*, p. 69.)

The court then proceeded to examine the question whether the Ihlen declaration, even if it did not imply a definitive recognition of Danish sovereignty, did not constitute an engagement obliging Norway to refrain from occupying any part of Greenland. This question was answered in the affirmative by the Court which

> "...consider[ed] it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs". (*Ibid.*, p. 71.)

The Court declared that the Ihlen declaration constituted an unconditional and definitive promise and held:

> "It follows that, as a result of the undertaking involved in the Ihlen declaration of July 22nd, 1919, Norway is under an obligation to refrain from contesting Danish sovereignty over Greenland as a whole, and *a fortieri* to refrain from occupying a part of Greenland." (*Ibid.*, p. 73.)

India argues that the Ihlen declaration was made at a time when there was no dispute between Denmark and Norway; the attitude changed when the dispute arose subsequently. The declaration cannot be put on a par with one sentence in one letter after an acute dispute had arisen and when "parties are fighting each other, as it were, in correspondence over a particular attitude". (Verbatim Records, pp. 13004.)

Pakistan argues that even though the issue of the *de jure* position with respect to the boundary had been contentious between the Parties, the Indian Note constitutes a clear admission by India of the *de facto* position of the alignment of the boundary at the time. (Verbatim Records, p. 18176.)

17. *General Argument*

17.01.1 As stated in Section 1.02.2, all instances of exercise of authority by Kutch cited by India have been relied upon by India as evidencing existing boundaries and not as constituting an independent source of title. The position of Pakistan is the same with regard to the instances relied upon by it which relate to the period before 1947 (Section

1.03.3). Exercise of authority by Pakistan in the years 1947 to 1956 is, as stated in Section 1.05.2, relied upon by Pakistan as an independent source of title, being in the nature of "continuous, undisturbed, peaceful display of State functions as an independent Power". (Verbatim Records, p. 18262.) For, while Pakistan claims all the rights that the British had in relation to Sind, that "does not [in its submission] prevent the accrual of additional sources for the entitlement to those rights independently of the British". (Verbatim Records, p. 18262.) Even the instances occurring before 1947 are relied upon by Pakistan to such effect, in the event that the Tribunal were to determine that the Rann was *terra nullius*. (Section 1.03.3.)

17.01.2 Two arguments are intertwined in Pakistan's case on this point, namely, the claimed total absence of Kutch up to 1926 from the northern half of the Rann, and the alleged ineffectiveness of the attempts by the Rao to establish a presence there after 1926. In contrast, Pakistan argues, Sind enjoyed actual possession, and the British exercised government functions in the disputed territory throughout the relevant period of time. Pakistan's fundamental position was at one time phrased as follows by its Counsel in oral argument:

> "If confirmation is to be sought it will be found that only refutation is available... it is an admitted position that up until 1926 the only positive thing that is proved [by India] with reference to the northern half of the Rann... is the absence of Kutch. They made the first attempt in 1926. Before that no attempt of any kind whatsoever was made... There is no statement or passage anywhere even remotely suggesting that impressions formed for some reason or another at a subsequent stage – unaccompanied by occupation, unaccompanied by any act, unaccompanied by any display – will be relevant. But what my learned friend has produced as evidence before you consists entirely of that category. Those are impressions.
>
> "So far as Kutch itself is concerned there is no display... [and such display] has to be continuous and peaceful. That display is altogether lacking all the time... The starting point has to be a solid one. There has to be an occupation or a display of such authority or state functions as the nature of the terrain is capable of allowing." (Verbatim Records, p. 16591.)

17.02.1 Pakistan relies upon the grazng activities referred to in Section 15 as being a constant practice of the inhabitants of Sind in conformity with their understanding of the alignment of the boundary. Pakistan also maintains that these activities came to acquire the nature of vested interests of the subjects of Sind which, significantly, received not only the sanction of the local British authorities, as evidenced by the order of the Collector of 1927, but also the protection of the police of Sind. Some of the instances would, therefore, in Pakistan's submission, constitute a direct display of State activity and State functions. (Verbatim Records, pp. 8767–8768/70.)

17.02.2 This argument is said by India to be untenable. In its submission,

> "Since the Kutch Darbar had not imposed any restrictions on cattle grazing in the Rann of Kutch, the Sind cattle were free to graze in the Rann and such grazing does not constitute exercise of jurisdiction by Sind authorities in the Rann." (Indian Counter-Memorial, p. 42.)

These acts, Counsel for India continues, with reference to Pakistan's reliance upon the sanction of the local authorities and the protection afforded by the police, are merely activities of villagers:

> "It is put ingeniously as being protected by State authority. How is it protected? It is protected because the villagers are told not to pay the tax to Kutch. I could understand that more value could be attached to the State's taking action if the State had protested to Kutch and said: these are our villagers, this is our land; what right have you to levy a tax? Short of that, it is not even State activity as such." (Verbatim Records, p. 12232.)

17.03 With respect to the order of the Collector of Thar Parkar of 1927, as well as to other statements by lower officials at various times, to the effect that the boundary of Sind extended to the middle of the Rann, or to some points in the Rann, Counsel for India argues:

> "The Governor-General of India and the Secretary of State certainly knew nothing about these particular so-called acts of jurisdiction. If they did, they did not treat them as acts done with the authority of the Secretary of State or the Governor-General with intent to acquire territory.
>
> "Secondly, they were not done even in the belief that half the Rann belonged to the British because the Secretary of State and the British Government did not believe that the British had jurisdiction south of the northern edge of the Rann. If they did not believe in that position it matters nothing that some subordinate officials thought that there was such jurisdiction. When one speaks of acts of exercise of jurisdiction, as I have already submitted to you, there are two ways of looking at it; either they are acts in the belief that the particular territory belongs, or alternatively [if it is claimed] ... that they constitute a fresh and independent source of title, ... [they] must be done with intent to occupy that territory belonging to someone else or as No Man's Land. That cannot be done by villagers or by a subordinate authority unless it is shown, so far as the subordinate authorities are concerned, that they did so on the instructions or orders of Government which had the intention of making some territory its own." (Verbatim Records, pp. 117141–2.)

17.04.1 India argues that the instances relied upon by Pakistan do not establish or amount to exercise of authority by Sind and that they do not at any rate constitute continuous and effective exercise of jurisdiction or control over any part of the Rann so as to be evidence in law to establish that the limit of the territory of Sind lay in the middle of the Great Rann or to confer title on Sind to any part of the Great Rann. Moreover, India asserts that the original position was that the Rann was Kutch territory and that the historically recognised boundary lay along the northern edge of the Rann. On that premise, which is basic to India's case as a whole, it argues that it is inconceivable that Great Britain could have had an intention to acquire the disputed territory. Such an intention is, India stresses, a necessary element in a claim to title based on the doctrine of acquisition or acquisitive prescription . Hence, India's "submission is that all these different acts in themselves are not of any consequence, but the very terrain, the very circumstances, the very relations between the Parties, the very admissions made, all discount any intention to act in that way". (Verbatim Records, p. 12083.)

17.04.2 This argument is elaborated by Counsel for India as illustrated in the following statement:

> "...this was a question of a vassal state and a suzerain: less than vassal, as my learned friend said. Police arrangements are there. The police do various things; the customs people do things; [The Maharao of Kutch] was not going to object, and I have set out the reasons why he possibly could not object. He certainly did not want to object, and the real crux of the matter is that he could never have believed in face of the various declarations made by the British themselves – in face of 1914, for instance, the reports, various other matters, and even the maps – that the British could ever have done these things with intent to acquire territory.
>
> "What apparently has happened,...is that, in the uncertain state of things in 1843 and thereafter, policing of the Rann was done by the police in Sind. Either the Rao had not got the forces – left it to them, as it were – but whatever they did could never have been construed as done with what I may call a dishonest intention. Because it would be dishonest if a party on the one hand keeps on saying 'the Rann belongs to you', keeps on producing and approving of maps which show that the Rann is not within Sind, and then, surreptitiously as it were, tries on the other hand to say: 'No, no, I am acquiring title by exercising jurisdiction'...
>
> "Now what is the effect of...[Queen Victoria's Proclamation of 1858]? It has been put before you by my learned friend himself: it signified a reversal or a stoppage of the policy that had been theretofore pursued of conquest and annexation. That policy was abandoned and the States were assured: 'We are not going to take away any of your territory' – in other words, 'That territory which is admittedly yours we now do not propose to take away as we did in the past by marching in and annexing it or compelling you to give it up'. But it did not go beyond that. If this was, as repeatedly declared in the documents, the territory of the Maharao, then surely, having regard to that proclamation, they were not going to try and get it away from him by this sort of loose means of exercising jurisdiction. They could have done it as the suzerain power by exercising political pressure. And indeed, Sirs, after the proclamation, where there has been a change of territory it has been by cession, by agreement, by surrender or by lapse – and exchange." (Verbatim Records, pp. 15443–44/50.)

17.04.3 India cites several International Law cases and textbooks in support of the above argument.

On the requirement of intent as a necessary element in acquisition, India relies upon the Judgement of the Permanent Court of International Justice in the Legal Status of Eastern Greenland case, in which the Court pronounced that

> "...a claim is sovereignty based...merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority". (Legal Status of Eastern Greenland Case, Judgement of April 5th, 1933, *P.C.I.J. Reports*, Series A/B, No. 53, pp. 45–46.)

17.04.4 Next, India quotes a passage from an article by Professor D. H. N. Johnson on acquisitive prescription in which he states that "...the possession of the prescribing state must be exercised *à titre de souverain*" and continues:

> "This means that a state cannot acquire a title by acquisitive prescription if, although administering a territory, it admits that the sovereignty over that territory belongs to another state. The reason for this is that the acquiescence

of the other state, which is a *sine qua non* of acquisitive prescription, is lacking. Or to put it another way, the administering state is by its own admission estopped from claiming a prescriptive title to the territory... Another consequence of the principle that the possession of the prescribing state must be exercised *à titre de souverain* is that the state must base its claim upon its own acts. It was the 'continuous and peaceful display of State authority', not the acts of individual Dutchmen, that decided the *Island of Palmas* case in favour of the Netherlands. Similarly, in the case concerning the *Legal Status of Eastern Greenland*, the Permanent Court of International Justice said 'a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon the continued display of authority, involves two elements each of which must be shown to exist: the intention and the will to act as sovereign, and some actual exercise or display of such authority'. As only a state can have 'the intention and the will to act as sovereign', it follows that the acts of authority relied upon must be those of the state as an international person, not those of mere individuals or even of subordinate divisions of the state." (Johnson, "Acquisitive Prescription in International Law", *The British Yearbook of International Law*, Vol. XXVII, 1950, p. 332, at pp. 344–5.)

17.04.5 Arguing that the acts of an administrative character performed by the Sind officials were not sufficient to efface or cancel the boundary line recognised and accepted by the British Government in various ways, including, for example, the 1914 Resolution and Map and the 1935 definition and Index Map, India quotes the following pronouncement of the International Court of Justice in the Temple of Preah Vihear case:

"With one or two important exceptions to be mentioned presently, the acts concerned were exclusively the acts of local, provincial, authorities. To the extent that these activities took place, it is not clear that they had reference to the summit of Mount Preah Vihear and the Temple area itself, rather than to places somewhere in the vicinity. But however that may be, the Court finds it difficult to regard such local acts as overriding and negativing the consistent and undeviating attitude of the central Siamese authorities to the frontier line as mapped." (Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgement of 15th June, 1962: *I.C.J.* Reports 1962, p. 30.)

17.04.6 India further relies upon the Judgement of the International Court of Justice in the Case concerning Sovereignty over certain Frontier Land, where the Court made the following pronouncement on certain acts of sovereignty relied upon by the Netherlands:

"The difficulties confronting Belgium in detecting encroachments upon, and in exercising, its sovereignty over these two plots, surrounded as they were by Netherlands territory, are manifest. The acts relied upon are largely of a routine and administrative character performed by local officials and a consequence of the inclusion by the Netherlands of the disputed plots in its Survey, contrary to the Boundary Convention. They are insufficient to displace Belgian sovereignty established by that Convention." (Case concerning Sovereignty over Certain Frontier Land, Judgement of June 20th, 1959: *I.C.J. Reports* 1959, p. 229.)

17.05.1 In answer to India's argument set out in the preceding Section 17.04, Pakistan emphasises that

"...the question of acquisitive prescription has not been raised by Pakistan and does not arise in the case with reference to the British period at

all. The question that does arise is that among the sources of title the exercise of jurisdiction itself is an important source and operates to confer title when no higher source of title in anyone else is available to override it". (Verbatim Records, p. 18261.)

17.05.2 Insofar as the British period is concerned, Pakistan stresses that, in its submission, the operation of the principle of acquisitive prescription would be confined should be the case where the Rann – contrary to Pakistan's case – is found to have been *terra nullius*. In support of its argument on this point, Pakistan relies on the following statement by Professor Schwarzenberger:

> "Another important presumption follows from the mere *de facto* exercise of sovereignty within a territory. Unless another State can produce a better title, the actual display of territorial sovereignty is evidence of the right of sovereignty over the territory in question." (Schwarzenberger, *International Law*, Vol. I, 3rd Ed., 1957, p. 120.)

Pakistan also relies for the same purpose on the following statement in Oppenheim:

> "States as living organisms grow and decrease in territory. If the facts of history are taken into consideration, different reasons may be found to account for the exercise of sovereignty by a State over the different sections of its territory. One section may have been ceded by another State, another section may have come into the possession of the owner in consequence of accretion, a third through subjugation, a fourth through occupation of no State's land. Finally, a State may assert that it has exercised its sovereignty over territory for so long a period that the fact of having had it in undisturbed possession is a sufficient title of ownership." (Oppenheim, *International Law*, Vol. I, 8th Ed., 1966, p. 546.)

17.06.1 India, as will have been seen (Section 1.02.2), relies upon the exercise of authority by Kutch as evidencing existing boundaries, equivalent to a consolidation of such an established boundary.

17.06.2 Pakistan emphasises that the starting point in any process of consolidation is "actual possession, actual control, physical exercise of sovereignty. Without that, the process does not begin and question of the process beginning does not arise". (Verbatim Records, p. 17541.) In support of this proposition, Pakistan quotes a passage by Professor Jennings, reading:

> "Further, it must be emphasized that however important all these various consolidating factors may be, it is still the fact of possession that is the foundation and the *sine qua non* of this process of consolidation. The process cannot, therefore, begin to operate until actual possession is first enjoyed. It is necessary to emphasize what may at first sight seem an obvious point because, as we shall see later in this course, in matters so imprecise as repute, it may not always be easy to distinguish between evidence of a true legal title and evidence of an alleged political right or claim to have the title transferred. There may be some danger, therefore, that a skilfully directed campaign of propaganda might seem to lay some apparently legal foundation for a forcible seizure of territory on the ground of an already existing embryo title in process of consolidation. It should be made quite clear, therefore, that the processs of consolidation cannot begin unless and until actual possession is already an accomplished fact and that, although no time is laid down, it remains true that it cannot be completed

until after a considerable period of possession as a sovereign." (Jennings, *The Acquisition of Territory in International Law*, 1963, p. 26.)

17.07.1 In its general argument on the nature of acts of exercise of authority, Pakistan initially recalls the Award in the Island of Palmas case in which the Arbitrator held:

> "Just as before the rise of international law, boundaries of lands were necessarily determined by the fact that the power of a State was exercised within them, so too, under the reign of international law, the fact of peaceful and continuous display is still one of the most important considerations in establishing boundaries between States... Manifestations of territorial sovereignty assume, it is true, different forms, according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas." (*United Nations Reports of International Arbitral Awards*, Vol. II, p. 831, at pp. 839, 840.)

17.07.2 Applying this precept, Pakistan observes that the Rann and the bets therein are not by nature capable of being occupied in the ordinary sense of the word:

> "It [the Rann] can be controlled by a State, if you control both of its shores, making it an internal enclosure of yours, otherwise it is not an area which is capable of being occupied. The islands in it are capable, in certain cases, of long continuous use, but even those islands are not capable of supporting permanent habitation; people would live and reside in [them] for some part of the season while there was grass, but it is not as if one could have a permanent settlement there. It is like the sea in this respect, that it is something to be traversed and crossed to get from one habitable area to another, but it is not itself a habitable area." (Verbatim Records, p. 5102.)

This statement is reminiscent of the pronouncement of the Permanent Court of International Justice in the Legal Status of Eastern Greenland case:

> "It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries." (Judgment of April 5th, 1933, *P.C.I.J. Reports*, Series A/B., No. 53, p. 46.)

17.08.1 In support of its argument that acts of private individuals cannot be evidence of title or have the effect of conferring title, India cites a passage occurring in the dissenting opinion of Lord McNair in the Fisheries case (United Kingdom *v.* Norway), reading:

> "Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them." (Fisheries case, Judgement of December 18th, 1951: *I.C.J. Reports* 1951, p. 184.)

Summing up its submission, India states that acts of individuals, to be relevant, "must be instruments proved to be Government instruments for exercising jurisdiction with the intention [to acquire territory]". (Verbatim Records, p. 12101.)

17.08.2 Pakistan relies upon the Judgment of the Court in the Fisheries case. In issue in that case were fishing rights on comparatively shallow banks, "veritable under-water terraces" (*ibid.*, p. 127), situated along the coast of Norway, and it was noted by the Court that "in these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing". (*Ibid.*, p. 128.) The Norwegian Royal Decree of 12 July 1935 concerning the delimitation of the Norwegian fisheries zone, the validity of which was contested, referred in its preamble, *inter alia*, to "the safeguard of the vital interests of the inhabitants of the northernmost parts of the country" as one of the considerations on which its provisions were based (*ibid.*, p. 125). Pakistan observes that the validity of the Decree under International Law was upheld by the Court.

17.08.3 Pakistan further relies upon certain passages in the Judgement of the Court in the Fisheries case where reference is made to "the close dependence of the territorial sea upon the land domain" and where the Court states that "[i]t is the land which confers upon the coastal State a right to the waters off its coast". (*Ibid.*, p. 133.) In elaboration of this reference, Pakistan also cites a statement in Oppenheim, occurring in the context of a discussion of territorial waters, where an opinion is expressed that "territorial waters of all kinds are inalienable appurtenances of the littoral and riparian States". (Oppenheim, *op. cit.*, p. 488.)

17.08.4 Alluding to these statements, and relying upon them as applicable by analogy, Pakistan argues that "these ancient rights of grazing are proof directly of this area belonging to Sind and in their very nature the rights are of such a kind that they cannot be separated from Sind". (Verbatim Records, p. 18247.) Indeed, Counsel for Pakistan concludes, with reference particularly to Dhara Banni and Chhad Bet:

> "To separate the coast from the rights that appertain to it and what lies beyond that coast in the horizontal plane, is like separating the ground from the rights that appertain to it in the atmosphere which extends above it in the vertical plane. The same principle is operating and I submit that in neither case, neither in the horizontal plane nor in the vertical plane, can that which appertains to that ground be separated from that ground." (Verbatim Records, p. 18246.)

17.08.5 In this context, it may finally be noted that the question was raised during the oral proceedings whether claims to servitudes, or to recognition of rights akin to servitudes might be made in the case. Both Parties agree, however, that this issue does not arise. (cf. Verbatim Records, p. 12211.)

MR. BEBLER'S PRESENTATION OF THE MATTERS DEALT WITH IN CHAPTER IX, SECTION 15: DHARA BANNI AND CHHAD BET. PIROL VALO KUN

On the northern side of the Great Rann, situated about half-way between the top of the vertical line and the Nagar Parkar peninsula, lies Dhara Banni, and closely connected to Dhara Banni in the east is Chhad Bet. In the submission of both the Parties, Chhad Bet is sometimes included when reference is made to Dhara Banni. The Parties have made the following formal submissions on the nature and characteristics of Dhara Banni and Chhad Bet:

India submits that:

> "In documents and maps, Dhara Banni has been referred to as a bet in the Rann. There is a marked difference between the high mainland of Sind and the Dhara Banni. Dhara Banni appears to have been originally a very small island. There are two versions about its origin – one being that it was thrown up from the Rann by the earthquake and the other being that it was detached from the Sind territory. In course of time alluvial deposits were formed adjacent to the original island."

Pakistan submits that:

> "Dera Bunnee, also known as Dhara Banni, is an extension of the mainland of Sind. It juts into the Rann as a peninsula. Chhad Bet is a further extension of Dhara Banni. Dhara Banni never gets flooded by water even though after heavy rainfalls, water remains in certain patches."

It is common ground that Chhad Bet, and, to a certain extent, Dhara Banni, are grasslands and provide grazing grounds for cattle. According to Pakistan, the cattle of the villages of Sind in the neighbourhood of these bets have been grazing there since "time immemorial" and this grazing activity has been "State protected", indicating that these bets have been a part of the territory of Sind. India says that it is not possible to fix with any accuracy the date when Sind cattle started grazing in these bets but it could not in any event have been before 1843; India further argues that the grazing activity was not State protected and, being an activity of private individuals, it is not evidence to prove that these bets were within the territory of Sind. India further points out that Macdonald's Survey did not include these bets in the Survey of Sind as he must have been told by the officials and villagers that they were not a part of Sind even though Sind cattle were grazing there at that time. India contends that there is evidence to show these two bets have been a part of the territory of Kutch.

Apart from grazing of cattle, there is no positive evidence submitted by either Party and dating from before 1876 regarding these bets.

The first reference appears in the second Report of the Bhuj Vahivatdar of 1876, wherein Dhera (Dhara Banni) is shown as being within the jursidiction of the Bhuj Vahivatdar, i.e., of Kutch. The Report says that "inhabitants of the Pachham graze their herds of cattle" in this and other bets and "bring grass"; "foreigners have no right to keep there their cattle". India says that Dhara

Banni (which includes also Chhad Bet) was thus a part of the territory of Kutch even before 1876. In Pakistan's submission the Report of the Bhuj Vahivatdar was made under instructions of the Dewan of Kutch to support the case that the entire Rann belonged to Kutch; a case was being prepared and hence the Report is unreliable. India answers by saying that the inquiry made by the Dewan was a straightforward inquiry.

India also relies upon a scheme proposed by the Dewan of Kutch in 1880 for the salt preventive line, in which the Dewan suggested the establishment of a customs post at Dhara Banni, as showing the jurisdiction of Kutch.

The next reference is to grazing in Chhad Bet by cattle from Sind about a year 1889. It appears in a petition to the Commissioner in Sind made in 1926 by the Raj Mahajans and Patels of certain villages in Sind, in which it is also stated that the inhabitants of those villages had some 36 or 37 years ago dug a pond in Chhad Bet and the pond was named after Patel Gul Mohamed Kapri (Pak. Doc. B.54). The same document refers to another tank said to have been excavated by a villager named Rana Kapri.

India contends that there is evidence of continuous exercise of jurisdiction over Chhad Bet by the Kutch Darbar since 1926 at least. Pakistan, on the other hand, contends that the Kutch Darbar attempted to exercise authority in Chhad Bet from 1926 onwards but the attempts were strongly resisted. The Parties rely on several documents in respect of their respective contentions.

India's version of the events in 1926 and 1927 is as follows:

(i) Until 1926, there was no restriction on cattle grazing in Chhad Bet but early in that year the Thanedar of Khavda reported that, as the bet belonged to the Kutch Darbar, a tax on grazing by cattle, called panchari, should be levied on the cattle belonging to the people of the foreign territory. He suggested that in the beginning panchari should be levied in a nominal manner. He also suggested that, as there was famine in that year, a tank and a well might be dug in the bet and after the rains two peons might be posted and off and on police patrol maintained. While forwarding the Thanedar's Report to the Dewan, the Revenue Commissioner observed that it was worthwhile considering whether "these fanatical people" might not create a disturbance on account of a new levy of panchari and advised that "because of new administration" steps should be taken slowly and with courtesy and intelligence so that no commotion whatsoever might take place as the people were "spirited and ignorant". The Dewan, in sanctioning the levy of panchari, recommended that, if people were willing to pay panchari, their written consent should be taken and administration of panchari should be commenced with tact and intelligence. The excavation of the tanks and the digging of the well were also sanctioned but, in regard to the digging of the well, it was stated that, if sweet water was not found, the balance sanctioned for the well should be used for the tank. As regards the posting of the peons, the Thanedar was directed to send his own peon for the time being and the new peon was to be appointed after receipt of a report on how the management was being carried out. A contract was given for supply of water at Chhad Bet for the labourers employed in digging the well and a tank and a receipt for payment made to the contractor is produced by India (Ind. Doc. A-73). Two

other persons were engaged to transport equipment for digging the well and the tank and the receipts for payment made to them are also produced.

(ii) A Report made by the Thanedar later indicates that he proceeded to Chhad Bet personally and, on inquiry, learnt from those present that they were willing to pay panchari in lump sum for the current year; people from one or two villages actually gave written consent to pay panchari, while people from two or three villages pleaded that, as it was a famine year, they should be exempted from payment of panchari for the current year and consented in writing to pay panchari from the following year; some persons were also willing to take a licence if one were to be given: they urged that in view of the famine and also in view of the fact that the year was coming to a close, and further taking into consideration the fact that the administration was to commence for the first time, the levy of panchari might be imposed from the following year. The Thanedar also reported that two peons were posted at Chhad Bet.

(iii) A few days later, the Thanedar reported that a well had been dug at Chhad Bet, that water was found but was absolutely saline and hence that the work of digging the well had been stopped.

(iv) Provision for a riding camel and a camel for transport of water for the peons and pakhal was made by the Kutch Darbar.

(v) In September 1927, the Thanedar submitted a statement of expenditure incurred on supply of water to the peons in Chhad Bet. The bills amounted to 652¾ Koris.

Pakistan observes as follows on these events:

(i) It appears that, after erection of pillars on the vertical line in 1924, it was thought in Kutch that the time had come to take courage and to create some token of exercise of jurisdiction in the northern half of the Rann. Several documents show that "a new administration for the first time" was sought to be established by Kutch in Chhad Bet.

(ii) Kutch was trying to make it appear that something in the nature of jurisdiction was being exercised with reference to Chhad Bet. On paper, something was put down. The digging of the well, etc., were all paper transactions. Nobody ever went there. There was no Kutch staff in Chhad Bet.

(iii) The graziers refused to pay the panchari to Kutch authorities and asserted that the possession and administration of the bet was theirs. 56½ Koris only were collected till 1929, according to the Bhotaldar of Khavda.

India denies that the various transactions were paper transactions and says that several people were involved, from the Dewan down to the Khavda Thanedar and the contractors. A conspiracy of a serious kind cannot be attributed to all these people. Nothing was anticipated at this stage which would require evidence to be forthcoming. The Khavda Thanedar, becoming conscious of the fact that people from outside were grazing their cattle, thought that the levy of a tax should be started and that was done. There was a good deal of opposition and hence the recovery was small. It may be that Kutch did not exercise any active jurisdiction over Chhad Bet before 1926 and that it started for the first time doing something actively there, and steps were taken.

Meanwhile, on 1 July 1926, the Raj Mahajans and Patels of Vingi and other villages of Diplo Taluka sent a petition to the Commissioner in Sind stating that "from the very existence of British Government" they had been putting up in the said villages and "all the time" they had been taking their cattle for grazing in Chhad Bet and they were not charged any tax, that the boundary of Thar was up to Kerdahi, Biria (Bedia?) and Bamarala (Bavarla?) and the boundary of Kutch State was "about 12 miles away from the abovesaid villages"; they further stated that about 40 years earlier the desert (the Rann) had been measured and the boundary fixed, and from that day they "had not been giving any tax for grazing cattle". They complained that "seven days ago" the Khavda Police Jamadar told them that a tax would be levied under the orders of the Rao of Kutch if anybody brought cattle for grazing in Chhad Bet. Stating that the Government were charging Rs. 2/- per maund on the product of ghee and hides, they prayed that they might be allowed to graze their cattle without any tax. They referred in their petition to the Gul Mahomed Kapri Tank and the other tank dug by Rana Kapri. They stated that Chhad Bet had been the cause of saving all the cattle of the 20 villages and that the cattle were the only source for their livelihood.

The petition was forwarded by the Commissioner in Sind to the Collector of Thar Parkar. The petitioners also submitted another application directly to the Collector which is not, however, exhibited in the case. The Collector commenced investigation as to where the boundary between Thar Parkar District and Kutch lay. He forwarded both the petitions to the Deputy Collector of Thar Parkar, who, in turn, obtained a report of the Mukhtiarkar of Diplo. The Report of the Deputy Collector is not on record but it appears from a note in the Collector's Office that the Deputy Collector said that the Mukhtiarkar was not able to trace the boundary between the Kutch State and the Thar Parkar District from Government records; that the Mukhtiarkar, however, submitted a sketch showing what according to the petitioners was the boundary; and that the petitioners had no personal knowledge of the boundary limits nor were there any boundary marks. The Deputy Collector was asked to make a further report and the Superintendent of Police was also asked to state whether offences committed in Dhara Banni and Chhad Bet were investigated by the Sind Police as stated by the petitioners.

Meanwhile, the Mukhtiarkar of Diplo found in his office papers the correspondence relating to the 1875–76 incident, discussed in Chapter VIII. Thereupon, the Collector addressed an inquiry to the Commissioner asking him whether the boundary was settled after 1876. The Assistant Commissioner asked the Superintendent of Land Records to supply the necessary information. The Superintendent of Land Records stated that, on a comparison of the old deh maps of 1873 with the office copy maps brought up-to-date in 1920, there had been no change in the boundary since 1876.

The Deputy Collector submitted a note after personally visiting the site along with the Patels of the nearby villages. He stated in the note that, according to the Patels, the boundary shown by them was settled many years back and they had never paid any grazing fees to Kutch. The Deputy Collector observed that if such a settlement of the boundary had taken place, pillars must have been

constructed, that all the taluka maps showed that the boundary of Sind ended where the desert of Sind met the Rann of Kutch, that the whole of the Rann being barren neither the British Government nor the Kutch Darbar had taken any interest in it and that, if the people of Thar had been grazing their cattle in a part of the Rann without payment of fees to Kutch, that was no reason to consider the land encroached upon as the property of the British Government. He suggested that, if no settlement of the boundary had been made, the dispute could not be decided until the Kutch Darbar had been given an opportunity to have a say in the matter.

When the note of the Deputy Collector and the aforesaid letter of the Superintendent, Land Records, were submitted to the Collector, he made the endorsement that the Superintendent, Land Records, should be asked whether he meant that the old deh maps of 1873 and the office copy maps brought up-to-date in 1920 actually showed the boundary or not, directed the issue of two letters (one to the Superintendent, Land Records and the other to the District Superintendent of Police) and ended up thus:

> "In default of any information we will continue to regard half the Runn as belonging to British and half to Kutch."
>
> "In this case Petitioners can be informed that they should not pay any fees, but, tell the Kutch Jamadar to go to Blazes."

The two letters were issued as directed. A copy of the letter to the District Superintendent of Police was endorsed to the Deputy Collector with the request to report whether people resided at Chhad Bet and Dhara Banni permanently or whether they resided for a portion of the year to graze their cattle. He was also asked to state who recorded births and deaths if people resided permanently in these bets and whether any grazing fees had been recovered by the Kutch State.

The Superintendent, Land Records, replied that:

> "The old map of Sind in 1873 and the office copy of the map of Sind brought up-to-date in 1920... show the boundary between the British territory and the Cutch State." (Pak. Doc. B.226.)

The Collector's Office made a note on the letter of the Superintendent, Land Records, that:

> "...the maps practically show no boundary of the British territory and the Cutch State in the Runn of Cutch...".

The District Superintendent of Police replied that no offences committed in Chhad Bet and Dhara Banni "appeared to have been reported to the Police of Diplo Police Station". The Collector noted on this letter:

> "I don't want to know if any offences have been reported, but whether these islands are in the Diplo P.S. limits and any offences would be registered at that P.S. Tell the S.I. to submit a proper report."

No additional report appears to have been received in the matter.

The Deputy Collector's reply was that the people at Chhad Bet and Dhara Banni did not reside permanently but resided only for a portion of the year to graze their cattle, that the births, deaths and epidemics were, however, recorded by the Diplo Taluka Office and that no grazing fees had been recovered by Kutch till then.

Finally, the Collector informed the Deputy Collector by a Memorandum dated 31 December 1927, that "he should continue to regard half the Rann as belonging to British and half to Kutch" and that the petitioners should be informed that they should not pay any panchari fees to Kutch authorities.

According to Pakistan, these events show that the people in the neighbourhood of Dhara Banni and Chhad Bet knew that their boundary was situated in about the middle of the Rann, and further that the Collector's final orders were merely confirmatory of what was said in 1875. The 1875 file, the whole of which is not traceable, perhaps contained clear references to half and half and, until that was contradicted, the Collector decided to continue to regard half the Rann as belonging to Kutch and half to Sind.

India argues that the Collector was not competent to decide political boundaries, and that the evidence which was before him was exactly the contrary of the decision taken by him: the District Superintendent of Police said that he never exercised police jurisdiction on these bets, the Survey Department indicated that the boundary was as claimed by India, the Deputy Collector advised that the taluka maps did not support the view taken by the Collector. The order was thus unauthorised, it was made by an official who was not competent to decide in the matter, and it was never acted upon. India describes the order as mischievous and irresponsible – mischievous because it was directly contrary to the evidence which the Collector had before him and irresponsible because the Collector knew full well that, assuming there was a dispute, it was not for him to decide the boundary.

Early in 1928 the Khavda Thanedar reported that the work at Chhad Bet had to be carried on by the staff of his office but, as there was no water in Chhad Bet, water had to be brought from the Thar villages. The sanction for expenditure for supply of water by a hired camel was recommended by the Revenue Commissioner.

India has produced account books maintained by the Khavda Thanedar for the years 1927 and 1929 which contain entries of receipt of grazing fees, the total amount received being 175¾ Koris, and the levy being at the rate of ¼ Koris per animal per month. India says that naturally the amount recovered would be small if the graziers were resisting; some would pay and some would not.

India says that thereafter the responsibility for collecting the fees was given to the Banni Tajvijdar who, however, took no action because he thought that the Khavda Thanedar, being nearer Chhad Bet, was the proper authority and accordingly recovery was not made.

In 1938, the Dewan felt that it was not possible for the Banni Tajvijdar to recover panchari in Chhad Bet. It appears that the Khavda Thanedar was entrusted with the duty of collection of panchari and said that two peons would be kept at Chhad Bet. The Revenue Commissioner recommended sanction of 650 Koris for six police constables and two residential quarters immediately. In 1941 the appointment of a Tajvijdar, two peons and three camel sowars was sanctioned. The police staff at Pachham was also directed to give assistance to the Khavda Thanedar. The Tajvijdar of Chhad Bet reported in 1942 that the

people were united and paid no heed to the authority of Kutch, that the enforcement of authority relating to the payment of panchari was most distasteful to them and that they spread rumours that harm would come to the men on his staff. In 1944, he reported that he and his staff produced in the Khavda Thanedar's office such cattle as they were able to lay hands on. The Khavda Thanedar also reported that, when men of his staff asked the Sind villagers not to graze cattle without payment of panchari, the villagers opposed them, prepared to fight and create trouble and disturbance, and forcibly grazed their cattle without payment of panchari; but that whenever men of his staff could lay their hands on the grazing cattle, they brought them to the Thanedar's office, whereupon the owners of the cattle presented themselves there and took back the cattle after paying panchari.

India has produced account books maintained by the Khavda Thanedar from 1938 to 1945 and they contain entries showing recovery as a result of the impounding of cattle grazing on the Chhad Bet without payment of the fee.

With reference to the above version of India, Pakistan has made the following points:

(i) The Revenue Commissioner's communication of 1938 contains a clear admission that for nearly ten years nothing had been done in Chhad Bet and that it had been administered by people of foreign territory.

(ii) The Khavda Thanedar's Report of the same year says that considerable difficulty was likely to be caused "in keeping alive the basic aim", which indicates that this was still the beginning of the establishment of a token exercise of jursidiction.

(iii) In his further Report, the Khavda Thanedar referred to making a beginning "after the entry of feet is made in Chhad Bet" and "after the limits and authority of Kutch" are established.

(iv) In his Memorandum of 1940, the Revenue Commissioner, in making certain recommendations, used the phrases "until actual possession has been obtained" and "until administration has been established", indicating that Kutch did not have actual possession and that there was no administration by Kutch.

(v) The Bhuj Vahivatdar made a Report in 1939 that Chhad Bet had not been administered since 1928–29 and no panchari had been realised.

(vi) There are remarks of the Kutch Accountant General which are clear admissions that there was no management from Kutch and that the people of Sind were the only users of Chhad Bet.

(vii) The Report of the Tajvijdar of Banni brings out the natural orientation of Chhad Bet to use as a Sind grazing ground; it is a kind of natural grazing for Thar and if one were thinking in terms of natural outlines and boundaries, it would be included in the natural contour.

(viii) In the Report of the Tajvijdar of Chhad Bet, made in 1942, the position is brought out that on the Sind side, once there had been the ruling of the Collector, the question of payment of panchari did not arise; his suggestion was to strike fear into Sind graziers.

(ix) In 1941, the Dewan observed that "there is now no dispute about the boundary on this side", meaning therby that there was a dispute till then.

(x) In 1944, an incident occurred in which officials of Kutch used violence against one of the graziers who formally lodged a case against them. His companions, however, were arrested by the Kutch authorities and taken to Kutch. The head constable of Baliari, Diplo, requested the Sub-Inspector of Police, Khavda, to produce the arrested villagers of Sind as the crime had been committed within Sind boundary. The Kutch Sub-Inspector stated that the arrested persons "had let loose their cattle in Chhad Bet situated in the jurisdiction of the Kutch State and caused improper damage to Chhad Bet in the limits of the Kutch State", that the revenue court had, upon admission having been made by the accused, decided that panchari was due from them, permission to defer payment thereof had been given to them and thereupon the arrested persons had been released after giving surety. The case, however, proceeded in Sind and the First Class Magistrate of Diplo asked for the extradition of the Kutch officials through the Secretary to the Resident, States of Western India. The request was processed by Kutch authorities and three reminders were sent by the Secretary to the Resident. When the matter was considered by the Revenue Commissioner, he reported to the Dewan that Chhad Bet was within Kutch territory, that the Kutch staff were doing their duty and that the arrested persons, after obtaining their release, had returned to Sind and filed a false complaint. In view of this Report, it was directed that appropriate action for writing a suitable reply might be sent. A fourth reminder was sent by the Secretary to the Resident, and Pakistan says the demand for extradition of the accused officials was still pending at the time of partition.

(xi) The *modus operandi* of the Kutch staff in the matter of collection of the grazing fees was some kind of "hit and run" operation with cattle.

India answers that due to the inaction of the Banni Tajvijdar nothing was done for about ten years to collect tax, but thereafter necessary action was taken by Kutch to post staff in Chhad Bet and make collection and a Tajvijdar was also appointed for Chhad Bet. In view of the Collector's orders, the Sind people were resisting recovery of the tax and were also threatening violence, and, in the circumstances, the Kutch staff was impounding the cattle for non-payment of fees. It was known to the higher authorities in Kutch that Chhad Bet was within Kutch territory and they never admitted that it was Sind territory. As regards the demand for the extradition of Kutch officers, a thorough inquiry was made and finally it was decided that they should not be extradited as they were doing their duty. After the decision was taken, presumably a reply was sent to the Resident, but a delay might have occurred in sending the reply, which would explain the fourth reminder from the office of the Resident. In India's submission the demand for extradition was not pending on the day of partition. (Pakistan, however, submits that the fact that the file which contains the reminders does not contain any answer "is actual positive proof of the fact that no reply was sent, rather than an inference only".)

India places reliance, as an instance of exercise of State authority by Kutch, on a lease for grazing granted to Node Sadi Rau by the Kutch Darbar on 18 July 1945. The lease comprised Chhad Bet, Dhara Banni and an area known as Pirol

Valo Kun. Under the lease, the term of which was five years, lessee undertook to pay a total of 15,000 Koris. He also undertook to "catch and drive into Khavda cattle pound animals which graze in this area without payment of grazing fees", while lessee would "get grazing fees and less on this account". A total of eight men were to be provided to lessee during the first year at the expense of the Darbar, lessee was to maintain account books "in order that proper 'Vahibat' [be] done", and was to be provided with a metal badge indicating State authority. The lease further provided that "during the course of collection of grazing fees from persons outside Kutch territory if there is any criminal cases such cases should be defended at Darbar cost". Lessee, in a Report dated 2 October 1948, stated that "the ijara of these Bets was given for the reason that it is said that the Rann belongs to the State of Kutch, but that there is no administration of the same ..."

India relies upon the fact that during the period of the lease to Node Sadi Rau, he used to impound the cattle grazing at Chhad Bet without payment of grazing fees and forward the cattle to Khavda; the owners of the cattle used to come over to Khavda and apply for the release of the cattle after payment of the grazing fees and penalty. Lessee also used to make reports about the impounded cattle. India has produced a list of 72 available applications from persons whose cattle were impounded and reports of the lessee; India has also produced some of these applications and Reports in original by way of illustration. India has further submitted evidence to show that the lessee had requested and was granted a loan of 4,000 Koris for the purchase of a motor vehicle and relies upon account books of the Khavda Thanedar which contain entries of recovery of the loan in instalments.

In Pakistan's submission, Kutch hereby embarked upon a "scheme of engaging a private person with the licence to terrorise the inhabitants of Sind and to extort from them whatever he could". The lease itself is said "not [to] represent a genuine transaction". A document filed by India indicates that the lessee met with difficulties as "people from Thar and Sindh often made murderous attacks on us with a view to killing us". Pakistan introduces in evidence a number of Reports of the lessee to Kutch authorities which describe the resistance with which he was met. These Reports set out the difficulties met with by the lessee, including the resistance and show of force on the part of the Sind people, and request the assistance and support of Kutch authorities. A Report made by the Khavda Thanedar indicates that the lessee had ceased to visit Chhad Bet towards the end of 1945 or beginning of 1946 for fear of attacks by the Sind people, although in a Report of the lessee himself, made in 1948, he complains that the people of Thar threatened to make a breach of the peace and on account of fear the Kutch police did not accompany him to Chhad Bet.

Pakistan relies upon three Reports in support of the contention that the grazing activity of Sind cattle in Dhara Banni and Chhad Bet was under police protection. These Reports are reproduced below *in extenso*:

(i) Note of June 1926:

"Peon Sama Ahmad Rao that the facts of Chhad Bet are as related by peon Jusab ... further says that in Chhad Bet there was no cattle of Soda people. We went to the

villages and on our telling them about Panchari, they said that the people of their villages had submitted an application before the British Government, on account of which they were helpless. But it was impossible for them to do without Chhad Bet. And Rana Kapri said that they had applied before the British Government, and therefore they would not pay Panchari. In the same manner, the people of Jalu village and Hingar ja Rajar have also said the same things. At the place of Rana Kapri, other people were also sitting and *among them was a Police Jamadar of the British Government, and another police constable*...". (Pak. Doc. B.341.)

(ii) Report of Node Sadi Rau of October 1945:

"...Thereafter Khas Khel Juma Sahab of Vanoi which is under Wagur came here from Thar. He found on the way that in Dhera Banni Bet, *some men of the population of Thar accompanied by two Police constables of the Thar Police* were grazing cattle and a message was conveyed to the Khavda Police of Your Honour to the effect 'that Chhad Bet and Dhera Banni are within the limits of the British Government and hence the subjects of that place graze their cattle therein and if either the Ijardar or the Police come here, they will regret it'. These facts were revealed by the said Khas Khel Juma Saheb in person to the Honourable Head Clerk Bhailalbai, the Khavda Police and myself, on the day you went on district tour. To ascertain these facts, I started on the night of Aso Sud 13, Thursday... for Chhad Bet with the Darbari peons of Chhad Bet and my employees all numbering 13 and we reached Chhad Bet in the morning of Aso Sud 15 and on inquiry found that approximately 300 cows and 212 camels of the villages of Thar were grazing in the Bet. We held these cattle and the peons stood up so as to stop the cattle from running away and the rest of my men got busy in preparing refreshment and food. Suddenly there was sound of gunfire and, on hearing this, we stood up. Meantime, the people of the villages of Panelo, Paneli, Bancho, Kahiyaro, Bandh, Mithi, Vani and Char Chapro etc. of Thar, numbering approximately 200 to 250, all armed with weapons, came and stood against us. Three of these men went near the peons and fired rounds in the air and thereby made the cattle run in the direction of Thar. In this manner, as we saw so many armed people, we felt afraid and sat down. These persons were riding about 80 to 100 horses and camels. The remaining persons were on foot. These people threatened to beat us against the law and wrongfully confined us till 5 o'clock in the evening and having scared the cattle made them run towards Thar.

"Thereafter one Haji Jam Dhodha Khan a Lundh of village Thuvar Cho of Thar came to us and said that 'all these persons of the entire district of Thar have collected and we, the people of all the villages, have come with a united determination not to pay Panchari, since the State of Kutch has no right whatsoever in Chhad Bet and other Bets, and our cattle have always grazed (therein). Now if you wish to save your life, don't come again in Chhad Bet in the capacity of an Ijardar. On this condition, we shall release you and your men. *Otherwise, there are men of the Thar Police also with me, and you will be killed*, and not a sign will remain in the Rann of your existence'. On this, to save our lives, we accepted what they said. On this, the marginally noted men from those who had come, remained with us to drive us out of Rann and the rest went towards Thar... *Some of these men had even official (Sarkari) guns and from this it seems the Police of Thar must be with the people of Thar*, which facts I declare... Apart from this, I have given a written memorandum to Lundh Dhodakhan Hahi Jam of Thuvar Cho shown at No. 11 undertaking that we shall not enter Chhad Bet and authorising him to look after, as my man. This (memorandum) was given to assure existence of evidence that he was present at the time the above dispute took place...

"The facts being as above, the request is that the people of all the villages of Thar District graze their cattle in very large number in the aforesaid Chhad Bet and Dhera Banni Bet. So in this matter, if appropriate arrangements are not made immediately, no one will pay Panchari properly... Because, if the authority of the Kutch State is established in these Bets, the Hon'ble Darbar will also get income of lakhs of Rupees... my request is that Panchari be recovered." (Pak. Doc. B.237.)

(iii) Report of Node Sadi Rau of November 1947:

> "At present, people of Thar for purposes of looting come down to Chhad Bet and other bets. They are looting very much. These cases are going on in village Mithi of Thar limits. *Police of Thar arrest and take away* after catching within our limits. The offence takes place in our territory of Chhad Bet. It appears that at present people of Thar consider Chhad Bet and others bets as their own and are ready to make breach of peace with me. On account of fear, our police do not accompany me to Chhad Bet. The climate is such that they have, in real manner, prepared papers against us. I am reporting this fact to your good self...". (Pak. Doc. B.162.)

The words italicized by me in the above three Reports are said to establish police protection to the grazing activities of the Sind people.

The account books produced by India show that during the period of lease of Node Sadi Rau amounts were recovered by way of grazing fee and penalty.

The area of Pirol Valo Kun, which was comprised in the lease of Node Sadi Rau, in Pakistan's submission forms part of what Pakistan refers to as the "upper lands in dispute". The area, which is described by India as grassland, is marked on the sketch exhibited as India Map B-1 as situated south-east of Kanjarkot; it does not appear on any other map on record. In a Report made in April 1946 by Node Sadi Rau's sons to the Thanedar of Khavda, the area is said to be "near Ding in the vicinity of Rahimki Bazar". A further statement on the geographical location of the area is provided in a Report of the lessee in which the area is said to be situated 120 miles from Khavda.

The first Report in which mention is made of Pirol Valo Kun is one of December 1945 in which it is urged that a thana be established on it, as well as on Dhara Banni and Chhad Bet.

In their Report of April 1946, quoted above, the sons of Node Sadi Rau reported that they had never before that time gone to Pirol Valo Kun. In July 1946, the Thanedar stated in a Report to the Revenue Commissioner of Kutch that "this Pirol Valo Kun has never been administered at all" and recommended that a thana be established "in order to start administration"; he requested that two policemen accompany the peons "on the frontier so that there may be impression of authority of this State on people of foreign territory".

In a Report of the lessee of December 1946, the following statement appears on Pirol Valo Kun:

> "...[it] is at a distance of about 30 Gaus from here and coming and going, it is a distance of 60 Gaus and the animal cannot travel for one day there. Therein, people of Thar and people of Sind collect against us in large numbers in the matter of guarding the aforesaid bets and try to make murderous attacks. Therefore, we cannot stay overnight in Pirol Valo Kun and it is not possible to make a journey of 60 Gaus during one day for the animal".

India relies upon the various activities of Kutch relating to the collection of panchari "as administrative acts evidencing the existence of jurisdiction". India stresses that "throughout the British Government made no protest to the Rao of Kutch". "Undoubtedly", India argues, "the Rao was purporting to do things in what he believed to be his own territory ...and it was for the British then, who must have known ...to have protested about what was in fact a trespass by Kutch on British territory."

Pakistan, conversely, argues that the Rao of Kutch never complained to the Paramount Power about the resistance his administration was met with by the population and by Sind police and Sind functionaries.

India states that after the expiry of the lease of Node Sadi Rau, Chhad Bet was leased jointly to two other persons – Sama Ibrahim Suleman and Sama Jusal Kesar. There are entries in the account books of the Khavda Thanedar regarding payments made to these lessees. Continuation of their lease from 1 August 1955 to 31 July 1956 was ordered by the Collector, Kutch, in a letter to the Mahalkari, Khavda of 30 July 1955.

Pakistan submits Reports of the successor lessee of 1957 in which it is stated that collection of panchari by them was discontinued when military forces took possession of Chhad Bet in 1956.

According to India, in 1948–49, there was a fodder famine in Kutch, whereupon the Kutch Darbar decided to bring grass from Chhad Bet. A contract was given to one Lodha Harpal Ghasiram of Rajkot to press bales of grass at Chhad Bet and he was paid Rs. 6,000/- initially for purchase of wire and payment to labour. A postcard written by Lodha Harpal to the Forest Officer in the matter later, on 20 February 1949, is also produced by India.

Pakistan submits in regard to this instance that it relates to a period of time when the boundary was disputed and that as such it is of no consequence, that in any event the proof (being assertions made on a postcard) is insufficient, and that the instance is "just a paper transaction".

Pakistan cites in evidence four post-Independence prosecutions by Sind for offences committed at Chhad Bet or its surroundings between the years of 1952 and 1955.

India relies upon 12 instances occurring in the year 1956 to 1964 in which accused persons were prosecuted and in some cases convicted in Kutch courts for violations of India Passport Rules at Chhad Bet. In regard to these instances, Pakistan stresses the fact that India does not rely upon any earlier prosecutions of offenders against Indian Passport Rules at Chhad Bet.

India relies upon entries in the Khavda Police Station Crime Register for 1956 which indicate five prosecutions of different persons for offences against the Indian Penal Code committed at Chhad Bet. It may be noted in this context that India stated that the Kutch courts, before as well as after 4 May 1948, could, without special permission, try offences committed by Kutch (Indian) nationals outside Kutch (Indian) territory. The entries in the Crime Register do not indicate the nationality of the accused.

Pakistan submits in regard to these instances that it is significant that the only claims made by India for the trial of any alleged offences committed on Chhad Bet relate to the period after 1956.

Pakistan relies upon the grazing activities as being a constant practice of the inhabitants of Sind in conformity with their understanding of the alignment of the boundary. Pakistan also maintains that these activities came to acquire the nature of vested interests of the subjects of Sind which received the sanction of the local British authorities, as evidenced by the order of the Collector of 31 December 1927 and the protection of the police of Sind. These instances, in

Pakistan's submission, constitute a direct display of State activity and State functions.

This argument is sought to be refuted by India as untenable. In India's submission

> "...since the Kutch Durbar had not imposed any restrictions on cattle grazing in the Rann of Kutch, the Sind cattle were free to graze in the Rann and such grazing does not constitute exercise of jurisdiction by Sind authorities in the Rann".

These acts are merely activities of graziers – private individuals. In this connection, India cites a passage from the Opinion of Lord McNair in the Fisheries Case (United Kingdom *v.* Norway), which reads:

> "Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."

India also relies upon the article by Johnson, "Acquisitive Prescription in International Law", in which it is observed:

> "The acts of authority relied upon must be those of the State as an international person not those of mere individuals or even of subordinate divisions of the State." (*The British Year Book of International Law*, Vol. XXVII, 1950, p. 345.)

Pakistan relies upon the Judgment of the Court in the Fisheries case. In issue in that case were fishing rights on comparatively shallow banks, "veritable under-water terraces", situated along the coast of Norway, and it was noted by the Court that "in these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing". The Norwegian Royal Decree of 12 July 1935 concerning the delimitation of the Norwegian fisheries zone, the validity of which was contested, referred in its preamble, *inter alia*, to "the safeguard of the vital interests of the inhabitants of the northernmost parts of the country" as one of the considerations on which its provisions were based. Pakistan observes that the validity of the Decree under International Law was upheld in the Court.

Pakistan further relies upon certain passages in the Judgement of the Court in the Fisheries case where reference is made to "the close dependence of the territorial sea upon the land domain" and where the Court states that "[i]t is the land which confers upon the coastal State a right to the waters off its coast". In elaboration of this reference, Pakistan also cites a statement in Oppenheim, occurring in the context of a discussion of territorial waters, where an opinion is expressed that territorial waters of all kinds "are inalienable appurtenances of the littoral and riparian States". (Oppenheim, *International Law*, Vol. I, 8th Ed., 1966, p. 488.)

CONCLUSIONS

DISSENTING OPINION OF JUDGE ALEŠ BEBLER

The Terms of Reference of the Tribunal

The Tribunal is called upon to determine where the boundary between Pakistan and India in the West Pakistan/Gujarat area lay, when the Indian Independence Act of 1947 came into force and its provisions were put into practice both with regard to partition of British India and to accession of Indian States to one or the other of the two Dominions. This follows undoubtedly from the Agreement of 30 June 1965 and the position of the Parties as defined in their Memorials and oral statements.

Sind became a part of Pakistan on 15 August 1947 under the said Act, and the Act further provided that the Province of Sind as it existed on 18 July 1947 was to form part of Pakistan.

Kutch acceded to India on 16 August 1947, Suigam on 15 August 1947, Wav on 31 August 1947 and Jodhpur on 11 August 1947.

Thus the critical date appears to be subdivided into five critical dates, all of them falling within a short interval of six weeks' time. As no events of importance occurred in this interval it could be said that the critical date is one date, with a slight duration of six weeks, or that the last of the above dates, 31 August 1947, is the critical date superseding the other ones. The practical consequences of either choice would be the same.

Since the Tribunal has to determine the alignment of the boundary between India and Pakistan on the critical date, in 1947, it has to refrain from taking any position inconsistent with this definition of its competence. Therefore:

(*a*) *If the Tribunal finds that there was no boundary at the critical date or that the boundary was not complete, it cannot supply a boundary of its own making or complete of its own making an incomplete boundary.*

A boundary is – in our times – normally a conterminous boundary. Unless there is between States a territory with a well-defined legal status under generally accepted rules of International Law (condominium, trusteeship and the like), all boundaries are usually conterminous. Blank spaces in maps have disappeared long ago. Generally speaking there are no longer any boundary disputes concerning the partition of territory between States which is admittedly no man's land.

In our case it is also common ground that the boundary is conterminous.

Nevertheless Pakistan says that, if the Tribunal finds that the boundary is not fully conterminous, the Tribunal should determine a conterminous boundary "on the basis of rules and principles applicable in such circumstances".

It has to be held with respect to this request of one Party that the Tribunal has not the power to do so. It cannot invent a boundary, a normal, conterminous

DECISION

The alignment of the boundary described in the Opinion of the Chairman and endorsed by Mr. Entezam has obtained the required majority. It is therefore the boundary determined by the Tribunal.

Done at Geneva, this nineteenth day of February, nineteen hundred and sixty-eight.

(*Signed*) (Gunnar Lagergren)

(*Signed*) (Nasrollah Entezam)

(*Signed*) (Aleš Bebler)

(*Signed*) (J. Gillis Wetter)

ANNEX I

AGREEMENT ON THE RULES OF PROCEDURE FOR THE DEMARCATION OF THE BOUNDARY TO BE DETERMINED BY THE TRIBUNAL

The Agent of India and the Agent of Pakistan have agreed to the following procedure for demarcation of the boundary between India and Pakistan in the Gujarat–West Pakistan sector in accordance with the Award of the Indo-Pakistan Western Boundary Case Tribunal (Constituted Pursuant to the Agreement of 30 June 1965).

1. The basis of demarcation shall be the alignment of the boundary as delineated by the Tribunal on maps to be annexed to the Award. Each Government should be supplied with two sets of these maps duly authenticated by the Tribunal.

2. Each Government shall nominate its Representative to be in overall charge of the demarcation work and intimate to the other Government and the Tribunal the name and address of such Representative.

3. The demarcation will be done jointly by a composite team consisting of an Officer-in-Charge, nominated by each Government, and other equal number of Indian and Pakistani personnel.

4. The Representatives of the two Governments shall meet at Delhi not later than two weeks after the Award is rendered to discuss and decide upon the following matters:

(i) The strength of the team.
(It is not possible to give the exact number of personnel composing the team at this stage as the strength of the team will depend upon the alignment of the boundary and the quantum of work involved which can be ascertained only after the Award is rendered.)

(ii) The design and specifications of the boundary pillars and traverse pillars, the number and spacing of pillars.
(The design and specifications of the boundary pillars will depend upon the alignment of the boundary and the nature of the terrain. The pillars may be of cement concrete, stone or masonry according to the requirements of the terrain.)

(iii) Detailed operational instructions for the guidance of the field staff.
(Such operational instructions have to be necessarily finalised only after the nature of the alignment is known.)

(iv) Any other matter which requires consideration for effective demarcation work.

If the Representatives of the two Governments do not agree upon any of the above matters, either Government shall immediately report to the Tribunal the matters in difference for the decision of the Tribunal.

5. The personnel of the demarcation team shall be made available for demarcation work by each Government not later than one week of the decision regarding its strength.

6. The first task of the demarcation team shall be to ascertain if any control points exist and are available. These control points should be supplemented, wherever necessary, in order to determine the pillar positions on the ground in accordance with the alignment of the boundary. If control points do not exist or are not available, a fresh series of triangulation or traverse will be carried out and control points determined and the pillar positions located with the help of these points.

7. Simultaneously with the location of the pillar positions, pillars shall be emplaced at each position. (It shall not be necessary to emplace pillars in any portion of alignment