Implementation of International Narcotics Control: The Struggle Against Opium Cultivation in Pakistan

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I. INTRODUCTION

In the late 1970's, the flow of heroin from Southwest Asia increased dramatically. In 1979, Pakistan alone produced an estimated 800 metric tons of illicit opium, making it the largest producer of illicit opium in the world that year. The total illicit opium production of Southwest Asia in 1979 reached a record total of 1600 metric tons. The potential heroin production represented by the 1979 bumper crop soon had a significant impact on the amount and quality of raw opium to heroin. Prospects for the 1980's, supra note 1, at 86.


3. Under the Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, 520 U.N.T.S. 204 (effective Dec. 15, 1964) [hereinafter cited as Single Convention], opium production is allowed only for medical and scientific purposes. Id. art. 4. All other opium traffic is deemed to be illicit. Id. art. 1(8). As of 1980, 134 nations were signatories of the Single Convention. U.S. Dep't of State, Pub. No. 9136.4 TREATIES IN FORCE, JANUARY 1, 1980, at 324-25 [hereinafter cited as TREATIES IN FORCE].

4. BUREAU OF INTERNATIONAL NARCOTICS MATTERS, U.S. DEP'T OF STATE, COUNTRY NARCOTICS PROFILE PAPER: PAKISTAN 1 (1980) [hereinafter cited as PAKISTAN PROFILE]. The country of Pakistan is bordered on the east by India, on the south by the Arabian Sea, on the southwest by Iran, on the northwest by Afghanistan and on the north by the People's Republic of China. See R. NYROP, AREA HANDBOOK FOR PAKISTAN at xvi (1975) [hereinafter cited as NYROP]. Pakistan is administratively divided into four provinces. Id. The province of Punjab lies in the northeast, bordering India and encompassing the northern section of the Indus River valley. Id. The province of Sind lies in the southeast, bordering India and the Arabian Sea. Sidd encompasss the southern Indus valley. Id. The province of Baluchistan lies in the southwest part of the country, and borders the Arabian Sea, Iran and Afghanistan. Id. The Northwest Frontier Province (N.W.F.P.) borders Afghanistan. Id. Additionally, Pakistan includes the Northern Areas of Gilgit and Balistan. The Federal Government administers these areas which border India, the People's Republic of China and Afghanistan. Id. at xvi, 216-17. Cultivation of opium poppies occurs mainly in the N.W.F.P., with some cultivation in the Gilgit Agency. PAKISTAN NARCOTICS CONTROL BOARD, DRUG ABUSE CONTROL IN PAKISTAN 7 (1981) [hereinafter cited as Drug Abuse Control].

5. Prospects for the 1980's, supra note 1, at 85.

6. The proportion of raw opium to heroin is approximately 10 to 1. PAKISTAN PROFILE, supra note 4, at 1. Therefore, the 1979 opium crop in Pakistan represented a potential 80 metric tons of heroin, while the total Southwest Asian crop represented a potential 160 metric tons. Such figures are alarming when considered in light of the fact that heroin addicts in the U.S. annually consume only 3 to 4 metric tons of heroin. Prospects for the 1980's, supra note 1, at 86.
heroin entering the United States. In 1978, the U.S. Drug Enforcement Administration (DEA) estimated that seventeen percent of all heroin reaching the United States originated in Southwest Asia. In the first six months of 1980, sixty-four percent of all bulk seizures of heroin in the United States originated in Southwest Asia. Further, the threat did not lie in quantity alone. The average purity of the Southwest Asian heroin seized during this period was seventy-eight percent, while that of Mexican Brown heroin, the next largest category of heroin being smuggled into the United States, was 8.3 percent.

The United States was not alone in feeling the impact of the 1979 bumper opium crop in Southwest Asia. Western Europe, particularly the Federal Republic of Germany, was also severely affected. Prior to 1976, Southeast Asian heroin comprised most of the heroin seized in the Federal Republic of Germany. Beginning in 1977, however, seizures of Southwest Asian heroin began to increase and, by 1979, according to one source, Southwest Asian heroin comprised most of the heroin present in the Federal Republic of Germany. In 1980, practically all of the heroin seized in Europe originated in Southwest Asia. Smugglers have also been moving Southwest Asian heroin across India to Hong Kong and markets in the Far East.

The Government of Pakistan is a signatory of the Single Convention of Narcotic Drugs, 1961 (Single Convention). In an effort to meet the obligations imposed by this treaty Pakistan, in 1979, announced the Prohibition (Enforcement of Hadd) Order.

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8. Future for the 1980's, supra note 1, at 93. Twenty-seven percent of bulk domestic heroin seizures consisted of Mexican Brown heroin, while 9% originated in Southeast Asia. Id.
9. Bulk heroin often contains dilutants or adulterants. Id.
10. Id.
11. Id.
13. Id. quoting Peter Bensinger, Administrator, Drug Enforcement Administration, U.S. Department of Justice. Southwest Asian heroin accounted for 70% of heroin in Germany in 1979. Id.
15. Id.
17. The Single Convention was supplemented in 1971 by the Protocol Amending the Single Convention on Narcotic Drugs, March 25, 1972, 26 U.S.T. 1442, T.I.A.S. No. 8118 [hereinafter cited as Amending Protocol]. As of 1980, 71 nations had signed the Amending Protocol. TREATIES IN FORCE, supra note 3, at 324-25. However, Pakistan has not signed the Amending Protocol. Id. Therefore, Pakistan's obligations are measured solely by the terms of the Single Convention.
Narcotics control efforts by Pakistani authorities have been a primary reason for the decrease in opium production in Pakistan since 1979. The Government of Pakistan has been assisted in its efforts by the United Nations, the United States and the Federal Republic of Germany. In spite of the efforts by Pakistan and the international community, the illegal production of opium continues. In the 1980-81 growing season, Pakistani farmers grew eighty-five metric tons of opium. One of the primary reasons for the continuing flow of opium lies in the peculiar nature of Pakistan's tribal areas, where farmers cultivate opium despite the government ban. Due to a combination of historical and political factors, the tribes in these areas, although administered by the Government of Pakistan, retain a large degree of tribal autonomy, especially in matters dealing with the administration of justice. Shielded from the narcotics laws by their semi-autonomy and attracted by the potential profits to be made, the opium farmers of the tribal areas sell their product to international narcotics smugglers. Illicit heroin laboratories convert the opium into heroin for sale on illegal markets in the United States, Europe and elsewhere. This Note examines the nature of illicit opium production and trade in Pakistan and the narcotics control efforts that the United Nations, Pakistan and other countries have made thus far. The author focuses on the obligations of Pakistan under the Single Convention on Narcotic Drugs, 1961, the efforts that the Government of Pakistan has made to meet these obligations, the aid pro-


20. Prospects for the 1980's, supra note 1, at 52 (statement of Mathea Falco, Asst Secretary of State for International Narcotics Matters). Another reason for the reduced production is the depressed price of opium caused by the existence of stocks carried over from the 1979 bumper crop. Id. See also Pakistan Profile, supra note 4, at 1.


22. Assistance programs to Pakistan have ranged from enforcement aid, such as the training of Pakistani narcotics officers, to rural development programs designed to replace opium as the main cash crop in certain areas of Pakistan. See § VI infra.

23. See § VI.A infra.

24. See § VI.B infra.

25. See § VI.C infra.


27. See § III infra.


29. NYROP, supra note 4, at 216.

30. Drug Abuse Control, supra note 4, at 5. Although the price of opium is currently depressed, see note 20 supra, few crops can match the cash value of the opium poppy to the farmer. Pakistan Profile, supra note 4, at 3. The lure of such profits diverts resources away from the legal economy in a producing nation. Prospects for the 1980's, supra note 1, at 72 (prepared statement of Mathea Falco).

31. See § II infra.

32. Single Convention, supra note 3.
grams by the United Nations, the United States and the Federal Republic of Germany, which assist Pakistan in meeting its treaty obligations, and the particular difficulties inherent in enforcing the anti-narcotics laws in the tribal areas of Pakistan. The author first reviews opium cultivation in Pakistan, with consideration of the areas where that cultivation takes place and the illegal trafficking of opium and opiates from Pakistan. The author then examines the history and nature of Pakistan's tribal areas. This section focuses on the British tribal policy which shaped the modern situation in Pakistan and the current constitutional and administrative status of the tribal areas. This Note also examines Pakistan and the system of international narcotics control with emphasis on the international control mechanisms and the obligations of Pakistan under multilateral narcotics treaties. The author considers the narcotics control efforts made by Pakistan, including the Enforcement of Hadd order prohibiting narcotics and the enforcement measures taken since 1979. The author further explores efforts that have been made by the international community to aid Pakistan in its anti-narcotics campaign. Particular attention is given to the programs sponsored by the United Nations Fund for Drug Abuse Control (UNFDAC) and narcotics-related programs in Pakistan by the United States and the Federal Republic of Germany. The author concludes with suggestions as to the further steps which should be taken to end opium poppy cultivation in the tribal areas of Pakistan.

II. Opium Production in Pakistan

A. Historical Development

1. Poppy Cultivation

The opium poppy has been grown in Pakistan for centuries. Poppy cultivation takes place primarily in the mountainous regions of the Northwest Frontier Province (N.W.F.P.). Opium poppies in the N.W.F.P. are sown between October and December, and are harvested in late March to early June. As a cash crop, opium has often sustained the precarious economy of the people in the N.W.F.P.

Historically, however, production of opium in the area of what is now Pakistan was not large.

During the period of British domination of the subcontinent, the British colonial authorities attempted to control opium cultivation by licensing opium

33. DRUG ABUSE CONTROL, supra note 4, at 5.
35. PAKISTAN PROFILE, supra note 4, at 3.
36. DRUG ABUSE CONTROL, supra note 4, at 5-6.
37. PAKISTAN PROFILE, supra note 4, at 2.
farmers.\textsuperscript{38} The authorities required licensed farmers to agree to sell their entire crop to the government.\textsuperscript{39} Following the partition of British India in 1947,\textsuperscript{40} the Government of Pakistan continued the licensing requirement in order to insure that opium farmers supplied only the legitimate demand for opium.\textsuperscript{41} Under the British, the government allowed the quasi-medical use of opium,\textsuperscript{42} and the Government of Pakistan continued to allow this use until the Enforcement of Hadd\textsuperscript{43} prohibition in 1979.\textsuperscript{44}

2. The Increased Demand for Pakistani Opium

Prior to the mid-1970's, opium production in Pakistan remained small,\textsuperscript{45} primarily supplying the legitimate domestic demand and some illicit demand in

\textsuperscript{38} Drug Abuse Control, supra note 4, at 5. The licensing system was in effect only in the settled areas of the N.W.F.P. Id. For a discussion of the administrative distinctions in the N.W.F.P., see notes 69-77 and accompanying text infra.

\textsuperscript{39} Drug Abuse Control, supra note 4, at 5.

\textsuperscript{40} The India Independence Act of 1947, 10 & 11 Geo. 6, ch. 30, divided British India into two nations, India and Pakistan. The partition of India had its roots in the rise of Muslim nationalism in British India. The Muslim League, a political party founded in 1906, NYROP, supra note 4, at 29, became the vanguard of the movement supporting a separate Muslim state on the subcontinent. See generally id. at 29-35. Upon independence, Mohammad Ali Jinnah, leader of the Muslim League since 1934, became the first governor general of Pakistan. Id. at 35. For a description of the events leading to the partition of India, see id. at 29-35; K. Sayeed, Politics in Pakistan, The Nature and Direction of Change 8-24 (1981) [hereinafter cited as Sayeed, Politics in Pakistan]; see generally K. Sayeed, Pakistan, The Formative Phase 1857-1947 (1968).

\textsuperscript{41} Extension of Programme, supra note 19, at 4.

\textsuperscript{42} Quasi-medical use denotes "the use of opium without medical aid for the relief of pain other than that caused by addiction to opium or to other narcotic drugs . . . ." Commentary on the Single Convention on Narcotic Drugs, 1961, U.N. Sales No. E.73.XI.1 at 468 (1973). This definition originated in the Opium Protocol of 1953, 14 U.S.T. 10, T.I.A.S. No. 5273, 456 U.N.T.S. 3 (June 23, 1953). For a discussion of the 1953 Protocol, see notes 227, 229 and accompanying text infra. The traditional forms of opium abuse in Pakistan are eating, and to a lesser extent, smoking. Pakistan Profile, supra note 4, at 3. Opium eating remains the most prevalent form of drug abuse in Pakistan, with an estimated 10,000 to 15,000 persons addicted to opium. J. Gammelgaard, Interim Progress Report, UN/Pakistan Programme for Drug Abuse Control 4 (June 1, 1981) [hereinafter cited as Gammelgaard] (Obtained through the courtesy of the Pakistan Narcotics Control Board, Government of Pakistan, 248-B, F-6/2, Islamabad, Pakistan. Copies are on file at the offices of the Boston College International and Comparative Law Review.)

\textsuperscript{43} Enforcement of Hadd, supra note 18. Until February 1979, opium could be purchased through 322 licensed opium shops (vends) in the major towns and cities of Pakistan. Each person could purchase up to 20 grams of opium per day in each shop. Extension of Programme, supra note 19, at 7.

\textsuperscript{44} Although Pakistan signed the Single Convention, under Article 49 of that treaty, Pakistan made a reservation allowing non-medical use of opium in the traditional manner. See § IV infra.

\textsuperscript{45} Pakistan Profile, supra note 4, at 2. Opium was being grown during this time by both licensed and illegal unlicensed growers. INCB Report, 1979, supra note 34, para. 89. Most of the opium poppies were grown on small plots in the N.W.F.P. Pakistan Profile, supra note 4, at 2. The level of illicit opium cultivation is difficult to determine. Estimates of illicit opium production in Pakistan in 1970 range from 175 to 200 metric tons, and in 1971 from 20 to 160 metric tons. Brunn, Fan & Rexed, The Gentlemen's Club, International Control of Drugs and Alcohol 293 (1975) [hereinafter cited as Brunn, Fan & Rexed].
neighboring Iran. However, in the 1970’s, a number of factors led to a sharply increased demand for Pakistani opium. These factors included the growth of the European market for illegal opium and opium derivatives, and a reduction of opium cultivation in Turkey, Mexico and the “Golden Triangle” countries of Thailand, Burma and Laos. Political events in the neighboring nations of Afghanistan and Iran reduced opium production in these nations, strengthening the demand for Pakistani opium. As a result of the increased demand, Pakistan became a leading producer of illegal opium for the international narcotics trade by the late 1970’s.

B. The Smuggling Process

1. Opium Smuggling Routes in Pakistan

Smugglers transport Pakistani opium into international narcotics trafficking channels through a complex and traditional marketing structure. Until the Soviet invasion of Afghanistan, the chief route extended westward from Pakistan through Afghanistan by means of vehicles and animal caravans. As a result of

46. Iran remains the single largest external market for Pakistani opium. GAMMELGAARD, supra note 42, at 5. Authorities believe that the majority of the illicit opium crop of Pakistan ends up in Iran. Id.
47. Id. Heroin consumption in Europe prior to 1970 was negligible. Antonelli, Asian Heroin on the Rise in Europe, 2 Drug Enforcement No. 3, at 34 (1975). The growth of European demand for heroin is evidenced by increasing seizures of the drug. In 1972, Asian heroin seizures in Europe totalled 22 lbs. Id. at 35. In the first six months of 1975, authorities seized 210 lbs. Id. Most of this heroin came from Southeast Asia. Id. at 34-35. However, by the late 1970’s, the main source of heroin in Europe was Southwest Asia. See notes 12-14 and accompanying text supra.
48. Id., supra note 4, at 2. In 1971, the Turkish Government banned all opium cultivation as of the fall of 1972. The result of this ban was a reduction in the amount of Turkish opiates on illegal markets in the United States. Note, Alternatives to Indirect Control of International Narcotics Traffic, 8 N.Y.U. J. Int’l L. & Pol. 241 (1975) [hereinafter cited as Note, Alternatives]. While the ban was later lifted, Cusack, Turkey Lifts the Poppy Ban, 1 Drug Enforcement No. 5, at 2-7 (1974), Turkey, the major source of heroin for the United States in the early 1970’s, has been overshadowed by other sources. Federal Drug Strategy — 1979, supra note 2, at 3.
49. Id. at 4. In 1975, Mexican Brown heroin accounted for 87% of all the heroin smuggled into the United States. Federal Drug Strategy — 1979, supra note 2, at 4. However, due to a largely successful crop eradication program carried out by the Mexican Government with U.S. aid, in 1978, Mexican Brown represented only 45% of the total heroin in the United States. Id. In the first six months of 1980, Mexican Brown only accounted for 27% of all seizures. Prospects for the 1980’s, supra note 1, at 95.
50. In 1978, Southeast Asian heroin accounted for approximately 38% of the heroin present in the United States. Federal Drug Strategy — 1979, supra note 2, at 7. Partly as a result of aid programs from the United States, but largely as a result of political chaos and a severe drought in the region, opium production in the Golden Triangle has decreased sharply. Id. at 6-7. In the first six months of 1980, Southeast Asian heroin comprised only 9% of all heroin seized. Prospects for the 1980’s, supra note 1, at 96.
51. Ellis, Pakistan Under Pressure, 159 Nat’l Geographic, 678, 696 (May, 1981) [hereinafter cited as Ellis].
52. Id. at 4.
53. Id. at 1.
the Soviet presence in Afghanistan, smugglers now favor other routes which, until 1979, they considered secondary.\(^\text{56}\) Presently, one major route extends from the N.W.F.P. through the province of Baluchistan to Iran and the states of the Persian Gulf.\(^\text{57}\) Another passes south to the port city of Karachi, in Sind Province, where the smugglers transport the opium by sea and air to markets in Western Europe, the United States and the Far East.\(^\text{58}\) Opium smugglers also use several other routes.\(^\text{59}\)

2. Heroin Refining

The smugglers process much of the opium which is smuggled westward into heroin or morphine base in refineries in Eastern Turkey and Southern Europe.\(^\text{60}\) Recently, however, Pakistani authorities have collected evidence of an increased capability to refine opium into heroin within Pakistan itself.\(^\text{61}\) Prior to 1980, narcotics seizures in Pakistan did not include any heroin.\(^\text{62}\) In 1979, authorities seized not only small amounts of bulk morphine.\(^\text{63}\) The following year, authorities seized sizeable amounts of heroin,\(^\text{64}\) and bulk morphine seizures increased dramatically.\(^\text{65}\) A consequence of the increase in heroin and morphine production inside of Pakistan is that since heroin is more compact than raw opium, it is more easily smuggled.\(^\text{66}\) Another consequence of a domestic heroin refining capability in Pakistan is the danger it creates of a greater domestic heroin addiction problem in Pakistan.\(^\text{67}\) In fact, the number of heroin addicts

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56. Id.
58. Id. See also Pakistan Profile, supra note 4, at 4.
59. Illicit Drug Traffic, 1981 Report, supra note 57, para. 21. Authorities in India have reported increased seizures of opium along that country's border with Pakistan, evidencing a smuggling route eastward from the N.W.F.P. through the Punjab. Gammelgaard, supra note 42, at 6.
60. Prospects for the 1980's, supra note 1, at 53.
61. Id. Heroin refineries in Pakistan are discussed at notes 69-70 and accompanying text infra.
63. Illicit Drug Traffic, 1981 Report, supra note 57, Annex IV. In 1979, authorities in Pakistan seized 5 Kg., 765 g. of bulk morphine. Id. Illegal laboratories convert opium into morphine, and morphine into heroin. See Narcotics Bureau, Royal Hong Kong Police, Heroin in Hong Kong, reprinted in 1 Drug Enforcement No. 4, at 24-29 (1974). This conversion process requires an acetylation agent. Id. at 25. The most commonly used is acetic anhydride. Id. Recently, Pakistani authorities have noted a marked increase in the illegal importation of acetic anhydride into Pakistan. Illicit Drug Traffic, 1981 Report, supra note 57, para. 46. The United Nations has been considering taking action against the traffic in acetic anhydride. Id., para. 47.
64. Illicit Drug Traffic, 1981 Report, supra note 57, Annex IV. In 1980, narcotics enforcement officials seized 8.5 kg. of heroin in Pakistan. Id.
65. Id. Bulk morphine seizures in 1980 totalled 350 kg., 180 g. Id.
66. Pakistan Profile, supra note 4, at 4.
67. Id.
in Pakistan is growing rapidly.\textsuperscript{68} One of the principal problems faced by narcotics control officers in this region of the world is determining the location of clandestine heroin laboratories.\textsuperscript{69} These laboratories are operating in an area of Pakistan where authorities do not enforce the narcotics laws, the tribal areas of the N.W.F.P.\textsuperscript{70}

III. The Tribal Areas: History and Administration

Most of the opium cultivation in Pakistan takes place in the Northwest Frontier Province.\textsuperscript{71} The N.W.F.P. is composed of three types of administrative areas: the settled areas, the merged areas and the tribal areas.\textsuperscript{72} The settled areas of the N.W.F.P. are totally integrated into the national structure and are governed directly by the N.W.F.P. Provincial Government.\textsuperscript{73} The tribal areas are directly administered by the Federal Government of Pakistan,\textsuperscript{74} but are largely governed by tribal law.\textsuperscript{75} The merged areas\textsuperscript{76} are administered by the Provincial Government and "are in the process of transition from the category of tribal to that of settled."\textsuperscript{77} Pakistani authorities fully enforce the narcotics laws of Pakistan in the settled areas, partially enforce the laws in the merged areas and do not enforce the laws in the tribal areas.\textsuperscript{78} The majority of opium in Pakistan comes from the

\textsuperscript{68} Haq, Growing Drug Abuse Assumes Alarming Proportions, Pakistan Times, Jan. 24, 1982 [hereinafter cited as Haq]. Heroin addiction has increased in Pakistan's urban areas in the past two years. Prior to this time, heroin addiction was virtually unknown in Pakistan. \textit{Id.} As of January 1982, 10 cases of heroin addiction were being treated in Rawalpindi, 55 in Quetta, 36 in Peshawar and 45 in Karachi. The addicts are generally between 20 and 30 years of age and many are university students. \textit{Id.}

\textsuperscript{69} Illicit Drug Traffic, 1981 Report, supra note 57, para. 50. The heroin laboratories are small and easily moved, allowing their owners to evade enforcement officers. \textit{Haq, supra note 68}. The tribal areas are located in terrain which makes enforcement extremely difficult. \textit{Gammelgaard, supra note 42, at 5}. The tribal areas are located in the Safed Koh mountain range. \textit{Compare Nyrop, supra note 4, at 67-68, with Drug Abuse Control, supra note 4, at 5}. These mountains reach an elevation of 15,620 ft. above sea level. \textit{Nyrop, supra note 4, at 67-68}.

\textsuperscript{70} \textit{Gammelgaard, supra note 42, at 5}.

\textsuperscript{71} \textit{Drug Abuse Control, supra note 4, at 7}. Some opium cultivation takes place in the Gilgit Agency in the Northern Areas. \textit{Id.}

\textsuperscript{72} \textit{Id.} at 5.

\textsuperscript{73} Extension of Programme, \textit{supra} note 19, at 1-2. The settled areas of the N.W.F.P. are the Hazara Division, which includes the districts of Kohistan, Mansehra and Abbottabad; the Peshawar Division, which includes the districts of Mardan, Peshawar and Kohat; and the Dera Ismail Khan Division, which includes the districts of Bannu and Dera Ismail Khan. \textit{See Drug Abuse Control, supra note 4, at 7}.

\textsuperscript{74} See \S \textit{III. B infra}.

\textsuperscript{75} \textit{Drug Abuse Control, supra note 4, at 5}. The tribal areas, although administered by the Federal Government, are part of the N.W.F.P. Extension of Programme, \textit{supra} note 19, at 1.

\textsuperscript{76} The merged areas of the N.W.F.P. consist mainly of the Provincially Administered Tribal Areas, i.e., the Malakand Division, which includes the districts of Chitral, Dir, Swat (including Buner) and the Malakand Agency. \textit{See Drug Abuse Control, supra note 4, at 7}. However, the Swabi/Gadoon Division, although technically within the settled areas of the N.W.F.P., Extension of Programme, \textit{supra} note 19, at 70, has the status of a merged area. \textit{Id.} at 73.

\textsuperscript{77} Extension of Programme, \textit{supra} note 19, at 2.

\textsuperscript{78} \textit{Gammelgaard, supra note 42, at 3, 5}.
merged and tribal areas.79

The tribal areas of Pakistan occupy approximately 10,500 square miles on or near the Pakistan-Afghanistan border.80 Although farmers in the tribal areas have grown opium for centuries, only in the past decade, and especially since 1979, has opium cultivation been large enough to supply illegal markets on an international scale.81 This recent increase in cultivation in the tribal areas is due to a combination of the greater demand for Pakistani opium82 and the strict enforcement of anti-narcotics laws by the Government of Pakistan in the settled and, to a lesser extent, in the merged areas of the N.W.F.P.83

A. British India and the Tribal Areas

1. Background

The British84 first came into contact with the frontier tribes when they defeated the Sikhs in 1849.85 The Sikhs had previously "administered" the tribes by maintaining strong garrisons of troops at various locations and occasionally collecting revenue by force from the surrounding tribes.86 The most remote of

79. DRUG ABUSE CONTROL, supra note 4, at 5. The opium poppy is a highly remunerative crop in the tribal and merged areas, where small land holdings, depleted soil and inadequate irrigation prevent cultivation of many crops. Id. For example, in 1979-1980, a farmer growing opium on unirrigated land received an average net return of 1380 rupees/acre. GAMMELGAARD, supra note 42, at 10. Using the same land, the farmer's net return on an acre of wheat was 960 rupees, while maize gave a net return of 450 rupees/acre. Id. One rupee equals .0976 U.S. dollars. Wall St. J., March 8, 1982, at 41, col. 1.

80. AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 8.

81. Interview with Akbar S. Ahmed, former Political Agent for South Waziristan and Visiting Professor of Anthropology, Harvard University (Jan. 13, 1982) [hereinafter cited as Ahmed Interview].

82. See text accompanying notes 47-53 supra.

83. GAMMELGAARD, supra note 42, at 3.

84. In the following discussion, the term "British" denotes both the British East India Company and the Government of India under the Crown. From 1757 to 1858, the British East India Company governed the British territory in India. NYROP, supra note 4, at 22-24. During the period of Company dominance, the British Parliament exercised an increasing measure of control over the ruling of India. Id. at 22. The Sepoy mutiny of 1857 led to the assumption of direct responsibility for the governing of India by the British Crown in 1858. Id. at 24-25.

85. AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 23. The Sikhs were a people living in the Punjab (the upper portion of the Indus River plain). NYROP, supra note 4, at xvi, 19. From 1799 until 1849, a Sikh kingdom dominated the Punjab. Id. at vii. The Sikhs were allies of the British during the First Afghan War, 1839-1842. Id. at 23. The Sikhs later grew fearful of British ambitions and, in 1845, attacked the British territory on their southeastern frontier. Id. at 24. The Sikh army was defeated in 1846 and parts of the Punjab were annexed by the British. Id. The Second Sikh war in 1848-1849 resulted in a final British victory and annexation of the entire Punjab by British India. Id.

86. XI A COLLECTION OF TREATIES, ENGAGEMENTS AND SANADS RELATING TO INDIA AND NEIGHBORING COUNTRIES 389 (C. U. Aitchison ed. 1933) [hereinafter cited as Aitchison].
the tribes had openly asserted their independence and the Sikh armies seldom penetrated into the hills to contest these claims. 87 When the British defeated the Sikhs, a large tract of undefined territory on the western bank of the Indus River passed to British India. 88 A series of attempts by the British to establish an outer boundary for India led to problems with the mountain tribes which, until then, had been, "for all practical purposes, independent of the rulers of the Indian plains." 89 These tribes were fiercely independent and had traditionally made plundering raids on the plains. 90

The tribes which inhabit the tribal areas are subdivisions of a people the British called Pathans, 91 although they refer to themselves as Pukhtons or Pushtuns. 92 These tribes have traditionally governed themselves according to tribal law which reflects Pukhtunwali, the Code of the Pukhtons. 93 The Pukhtunwali is fundamentally concerned with nang or honor. 94 Living according to this Code, the Pathans reconcile themselves only with great difficulty to situations imposed by outsiders. 95 The world of the Pathans centered then, as now, around the principles of Islam and the Pukhtunwali. 96 The British, in their attempts to establish a northwestern frontier for India, confronted these fiercely independent tribes, which had never been conquered. 97

In the early 1800's, British power in India was largely concentrated in the area surrounding the Ganges River. 98 In 1804, the British acquired Delhi and subsequently expanded their power in the Punjab, 99 the Indus valley and the mountainous regions of the northwest. 100 As they expanded their territory, the British became increasingly aware that their growing land holdings on the subcontinent

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87. Id.
88. Embree, Pakistan's Imperial Legacy, PAKISTAN IN A CHANGING WORLD 10 (M. Hassan ed. 1978) [hereinafter cited as Embree].
89. Id. at 11.
90. Id.
91. NYROP, supra note 4, at 123.
92. Id. The Pathans are the majority ethnic group in the N.W.F.P. Id. Pathans also live in northern Baluchistan. Id. at 122. Pathans live in other areas of Pakistan as well. The city of Karachi has over one million Pathans living there. A.S. AHMED, PUKHTUN ECONOMY AND SOCIETY, TRADITIONAL STRUCTURE AND ECONOMIC DEVELOPMENT IN A TRIBAL SOCIETY 99 (1980) [hereinafter cited as AHMED, ECONOMY AND SOCIETY].
93. Id. at 106.
94. Id.
95. AHMED, ECONOMY AND SOCIETY, supra note 92, at 89-90. The Pukhtunwali is the core of social behavior among the Pukhtons. Id. at 89. The primary element of the Pukhtunwali is badal which is revenge. Id. at 90. Other elements are melmasti or hospitality to guests and nanawatee, which is the magnificent honoring of peace offers. Id. Underlying all aspects of the Pukhtunwali is the concept of nang or honor. See id. at 91-92.
96. Id.
97. Id. at 106.
98. supra note 88, at 389.
100. Embree, supra note 88, at 5.
were vulnerable to attack through the mountain passes from Afghanistan.101 Coupled with this fear were two other pressures that weighed heavily on the British. First, the British were anxious to discourage the Pathan tribes from raiding the British administered and controlled plains.102 Second, and more important, the growing Russian influence in Central Asia103 led a number of British officials to fear either a Russian invasion of India or a Russian-sponsored uprising of the Indian states.104 As a result of these pressures, the British eventually established three frontiers for India.105

The “three-fold frontier,”106 as established on the northwest border of British India, was composed of three zones with varying degrees of British control.107 The first frontier consisted of those areas under the direct administration of the Government of India,108 i.e., the modern “settled areas”109 of the N.W.F.P.110 The third frontier consisted of the outer area of British influence, a buffer state which, in theory, would be independent, although tied to the Government of India by treaties or other obligations, i.e., Afghanistan.111 The second frontier of India’s “three-fold frontier” was the zone which today comprises the tribal areas and the merged areas of the N.W.F.P.112 One authority described the tribal territory as

101. See id. at 5-7.
102. See Aitchison, supra note 86, at 389. In the eyes of the British, their relations with the tribes were characterized by “the constant strife inevitable when a civilised administration marches with a tract inhabited by lawless men whose immemorial habit has been the plunder of their less warlike neighbors.” Id. The tribes, resenting any interference with their freedom, fought a jihad or holy war against the British, death in which meant eternal paradise for the fallen. Howell, supra note 94, at vi.
103. A.J.P. Taylor, The Struggle for Mastery in Europe, 1848-1918, at 298-99 (1977). After 1825, the Russian Empire made gradual advances into Turkestan, which is north of Afghanistan. Id. For a map of Russian expansion in Central Asia, see id. at 299.
105. Id. at 2-3.
106. The term was coined in Curzon, Frontiers 4 (1907) cited in Embree, supra note 88, at 2-3.
107. Embree, supra note 88, at 4. The establishment of the “three-fold frontier” was not the result of a definitive plan. See generally, Embree, supra note 88, at 2-3. The unique nature of the frontier was the result of an aggressive British border policy which became known as the Forward Policy. Nyrop, supra note 4, at 26. The Forward Policy, as embodied in the actions of Sir Robert Sandeman and others, beginning in the 1870’s, envisioned the establishment of a “buffer zone” between the expanding Russian Empire and British India, while pacifying and controlling the border tribes. Sayeed, Politics in Pakistan, supra note 40, at 3-4. See also Nyrop, supra note 4, at 26-27. The buffer zone envisioned by Sandeman would utilize the frontier tribes to maintain peace in their districts and as guardians of the highways through the area. Sayeed, Politics in Pakistan, supra note 40, at 3-4.
109. See text accompanying notes 71-79 supra.
110. Cf. Aitchison, supra note 86, at 387, which describes the areas of the N.W.F.P. which fell under the direct administration of the Government of India.
111. Embree, supra note 88, at 5. Afghanistan was never under British influence to the extent of the ideal model. Id.
112. Compare the description of the tribal territory in Aitchison, supra note 86, at 387-88 with the map of the N.W.F.P. in Drug Abuse Control, supra note 4, at 7.
a zone regarded as under the territorial control of the Government, but where the law and administrative forms, especially the systems of taxation, were not applied. Tribal chieftains continued customary forms of government, with general control exercised over them by the Government of India through subsidies and, ultimately, the army.\footnote{113}

The line between the tribal territory and the directly administered, settled areas of the N.W.F.P. became known as "the border."\footnote{114} On the other hand, the furthest extent of nominal British control, i.e., the frontier of India, was the Durand line,\footnote{115} which ran on the north and west sides of the tribal territory, marking what is presently the border between Pakistan and Afghanistan.\footnote{116} C.U. Aitchison, Under Secretary to the Government of India in the Foreign Department, accurately describing the area between the border and the frontier stated: "This tribal territory, though included in India, is not a part of British India."\footnote{117} The semi-autonomous status of the tribal territories was an anomaly resulting from the failure of British attempts to subjugate the Pathan tribes of this region by force.\footnote{118} Beginning in 1852, the British waged numerous military campaigns against the Pathans of the tribal territory.\footnote{119}

2. Treaties between the British and the Tribes

One of the primary concerns of the British during the nineteenth and early twentieth centuries was to prevent the mountain tribes from raiding the plains and valleys.\footnote{120} The British attempts to conquer the mountain tribes led to

\footnotesize\begin{itemize}
  \item \footnote{113} Embree, supra note 88, at 4.
  \item \footnote{114} Aitchison, supra note 86, at 387. A lengthy description of the border can be found in id. at 388.
  \item \footnote{115} Id. at 387-89. The Durand Line was named for Sir Mortimer Durand, who negotiated this international boundary of British India with the Amir of Afghanistan in 1893. Nyrop, supra note 4, at 27.
  \item \footnote{116} Aitchison, supra note 86, at 387-88.
  \item \footnote{117} Id. at 387.
  \item \footnote{118} Cf. id. at 389-90 (summary of British/tribal relations).
  \item \footnote{119} Id. at 389. The major Pathan tribes of the tribal territories are the Utman Khel, the Tarkani, the Mohmand, the Afridis, the Shilmanis, the Shinwaris, the Orakzais, the Turis, the Waziris, the Daurs, the Mahsud and the Bhittanis. Ahmed, Social and Economic Change, supra note 79, at 30-37. Many of these tribes have several sub-sections. Id. For example, the Afridi tribe consists of eight clans. Id. at 32. Since a description of the numerous battles fought between the British and the various tribes and their sub-sections would require a work of far greater magnitude than this Note, the description which follows deals only with the major factors which influenced British/tribal relations. The battles and the resulting treaties between the British and the tribes are described in Aitchison, supra note 86, at 387-623.
  \item \footnote{120} Embree, supra note 88, at 11. The area inhabited by the mountain tribes is isolated and mostly barren. See note 79 supra. Historically, the tribes lived by exacting payment from those wishing to use the mountain passes to Afghanistan. Nyrop, supra note 4, at 124. Plundering raids on the more fertile lowlands of the plains were another way of obtaining wealth that could not be found in the mountains. Id.
\end{itemize}
treaties\textsuperscript{121} with most of the individual tribes.\textsuperscript{122} Through the treaties' provisions, the British secured certain promises from the tribal \textit{jirgas} (councils of elders).\textsuperscript{123} Most of these treaties contained similar terms.\textsuperscript{124} The treaty signed by the \textit{jirga} of the Mahsud tribe on April 5, 1902 is typical of the British-tribal treaties.\textsuperscript{125}

In the Mahsud treaty, the \textit{jirga} promised, on behalf of the tribe, to remain loyal to the Government of India, to commit no offenses in areas occupied by the government or on roads and trade routes or against government interests.\textsuperscript{126} The \textit{jirga} also promised not to harbor outlaws from areas occupied by the government.\textsuperscript{127} In return for these promises, the government paid the tribe the sum of Rs. 54,000.\textsuperscript{128} When a tribe or one of its members broke a treaty, the government levied a fine upon the entire tribe, since, under the terms of many treaties, the tribe was responsible for the conduct of its members.\textsuperscript{129} If the tribe refused to pay the fine, the Indian Government, as a last resort, could always call in the army.\textsuperscript{130} As long as the tribes honored their treaty obligations, they were free to govern their other affairs without interference from the British.\textsuperscript{131}

From the viewpoint of the British such raids were inexcusable. Aitchison, \textit{supra} note 86, at 389. The British considered the raiding tribes as little better than outlaws and the British Army organized many military expeditions against the tribes in retaliation for these raids. \textit{Id.} In addition to retaliatory actions, the British quelled a number of rebellions by the tribesmen. These rebellions were often rooted in the declaration of a \textit{jihad} or holy war against the "infidel" British. \textit{Ahmed, Economy and Society, supra} note 92, at 106.

The dispute between the British and the Amir of Afghanistan from 1877 to 1881, and the resulting Second Afghan War of 1878-1880 caused a large number of confrontations between the British Army and the tribes. Aitchison, \textit{supra} note 86, at 390. Consequently, in 1878, certain war measures were approved by the Government of India "in order to detach from all political connection . . . those independent tribes on our border whom it is most important . . . to bring under our own influence to the exclusion of that of the Amir." Howell, \textit{supra} note 94, at 5.

\textsuperscript{121} Aitchison, \textit{supra} note 86, at 389.

\textsuperscript{122} \textit{Ahmed, Economy and Society, supra} note 92, at 308.

\textsuperscript{123} The treaties relating to each of the Pathan tribes in the tribal territory are reprinted in Aitchison, \textit{supra} note 86, at 454-618.

\textsuperscript{124} \textit{Ahmed, Economy and Society, supra} note 92, at 90. The \textit{jirga} is a council of elders or \textit{masahars} called to decide specific issues. Decisions of the \textit{jirga} are binding on the parties \textit{id.} and are based on a combination of Islamic law and Pukhtun custom. \textit{Id.} at 90-91. Sanctions imposed by the \textit{jirga} include ostracism and disobedience may result in fines or, in extreme cases, burning of the offender's house. \textit{Id.} at 91.

The membership of the \textit{jirga} is not fixed and the number of members may range from five to fifty, depending on the importance of the issue at hand. \textit{Id.} Each of the treaties generally guaranteed the tribes' independence concerning internal matters in return for an acknowledgement of the British Raj. \textit{Id.} at 308.

\textsuperscript{125} Aitchison, \textit{supra} note 86, at 597-98.

\textsuperscript{126} \textit{Id.}

\textsuperscript{127} \textit{Id.}

\textsuperscript{128} \textit{Id.}

\textsuperscript{129} \textit{Id.}

\textsuperscript{130} Embree, \textit{supra} note 88, at 4.

\textsuperscript{131} \textit{Ahmed, Economy and Society, supra} note 92, at 308. The British did, however, make some effort to control crime in the tribal areas. \textit{See} notes 152-58 and accompanying text \textit{infra}. 
semi-autonomy fostered in large part through these tribal treaties continues today.\textsuperscript{132} Indeed, Pakistan continues to honor many of these treaties.\textsuperscript{133}

3. British Administration of the Tribes: The Establishment of Tribal Agencies

When the British first came into contact with the frontier tribes, no special agency responsible for relations with the tribes existed.\textsuperscript{134} The Deputy Commissioners of six districts administered tribal relations.\textsuperscript{135} In 1876, the Government of India reorganized these six districts into two commissionerships, the northern three composing the commissionership of Peshawar, and the southern three, the commissionership of Derajat.\textsuperscript{136} Thereafter, the Government of India realized that a more defined method of administering relations with the tribes was needed, and established Tribal Agencies.\textsuperscript{137} In 1878, the government appointed a special Political Officer for the Khyber Agency.\textsuperscript{138} In 1892, the government established the Kurram Agency.\textsuperscript{139} In 1895-96, the government established the agencies of North Waziristan,\textsuperscript{140} South Waziristan\textsuperscript{141} and Malakand.\textsuperscript{142}

Until 1901, the Tribal Agencies, with the exception of the Malakand Agency,\textsuperscript{143} were under the direct control of the provincial government of the Punjab.\textsuperscript{144} When the British created the Northwest Frontier Province in 1901, the administration of all the tribal territory\textsuperscript{145} came under the Central Govern-

\textsuperscript{132} Ahmed, Economy and Society, supra note 92, at 308.
\textsuperscript{133} Id. Pakistan has no formal obligation to honor the tribal treaties. See notes 159-61 and accompanying text infra.
\textsuperscript{134} Ahmed, Social and Economic Change, supra note 79, at 23.
\textsuperscript{135} Id. These districts were Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. Id.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id. The Khyber Agency is named for the famous mountain pass of the same name. The appointment of the first Political Officer took place during the Second Afghan War. Id. The majority of the tribes in the Khyber Agency are sub-sections of the Afridis. Id. at 32. Other tribes represented are the Mullagoris, Shilmanis and Shinwaris. Id.
\textsuperscript{139} Id. at 34. The British occupied the Kurram Agency in 1892 at the invitation of the Turi Shia tribe, who, being of the Shia sect of Islam, id. at 8, feared attack by the neighboring tribes of the Sunni sect. The majority of the tribes in the tribal areas are Sunni Muslims. Id. In addition to the Turis, the Kurram Agency includes the Para Chamkani, the Massozai, the Ali Sherzai and the Zai Musht tribes. Id. at 34.
\textsuperscript{140} Id. at 23. Established in 1895, the North Waziristan Agency includes the Daur tribe and part of the Wazir tribe. Id. at 35.
\textsuperscript{141} Id. at 36. Established in 1895, the South Waziristan Agency includes the Mahsud and part of the Wazir tribe. Id.
\textsuperscript{142} Id. at 23.
\textsuperscript{143} The Malakand Agency was under the direct control of the Government of India from the time of its creation. Id.
\textsuperscript{144} Id.
\textsuperscript{145} The Northwest Frontier Province (N.W.F.P.) was organized on November 9, 1901. Aitchison, supra note 86, at 387. The N.W.F.P. is composed of the modern-day settled, merged and tribal areas. See id.
ment of British India.\textsuperscript{146}

The duty of a Political Agent under the British system was to manage the relations between the Government of India and the tribes in his agency.\textsuperscript{147} The tribes remained, for the most part, self-governing and the law in the tribal areas continued to be based on the \textit{Pukhtunwali}.\textsuperscript{148} The Western judicial system was incompatible with Pathan sentiment.\textsuperscript{149} In an effort to create a body of criminal law that could be enforced among the Pathans, the Government of India formulated the Frontier Crimes Regulation (FCR).\textsuperscript{150} The British originally introduced the FCR in 1871\textsuperscript{151} and modified and amended it in 1887\textsuperscript{152} and in 1901.\textsuperscript{153} Trial for enumerated offenses under the FCR was held before a \textit{jirga} of the tribe to which the parties belonged.\textsuperscript{154} After 1901, in any case where parties belonged to different tribes, a council drawn from \textit{jirga} members of each tribe decided the case.\textsuperscript{155}

The British experience in governing the tribes met with mixed success. While the British had succeeded, to a large degree, in containing the tribes,\textsuperscript{156} they had not succeeded in conquering them,\textsuperscript{157} and the treaties between the tribes and the Government of India clearly reflect this difference.\textsuperscript{158} The basic obligation of the

\begin{footnotesize}
\bibitem{146} AHMED, \textit{SOCIAL AND ECONOMIC CHANGE}, supra note 79, at 23. The British divided most of the tribal territory into agencies. Aitchison, supra note 86, at 387. The Deputy Commissioner of an adjoining district of the N.W.F.P. administered the remaining areas. \textit{Id.} While administering the tribal territory, the Deputy Commissioner acted in the role of a Political Agent. \textit{Id.}

\bibitem{147} Aitchison, supra note 87, at 387.

\bibitem{148} AHMED, \textit{SOCIAL AND ECONOMIC CHANGE}, supra note 79, at 43-44.

\bibitem{149} Haider, \textit{Evolution of Frontier Crimes Regulation}, in \textit{PUBLIC ADMINISTRATION AND POLICE IN PAKISTAN} 161 (S.M. Haider ed. 1968) [hereinafter cited as Haider]. \textit{See description of the Pukhtunwali at note 124 supra.}

\bibitem{150} Haider, supra note 149, at 161.

\bibitem{151} \textit{Id.} Under the British judicial system and western concepts of justice, criminal behavior is ultimately defined in a manner which reflects societal notions of right and wrong. The same is basically true in Pukhtun society. However, the concept of right and wrong among the Pukhtuns, as embodied in the \textit{Pukhtunwali} (described in note 93, supra) is fundamentally different from western perceptions of the concept. For example, in Pukhtun society, a person who kills another is not punished unless the killing is committed outside the laws of revenge recognized in the \textit{Pukhtunwali}. AHMED, \textit{ECONOMY AND SOCIETY}, supra note 92, at 93-94. To use a western concept, a killing committed within the \textit{Pukhtunwali} is "justifiable." Under British law, revenge is not considered a justification for killing and a person who kills for revenge would likely be guilty of murder. \textit{See generally BLACKSTONE'S COMMENTARIES ON THE LAWS OF ENGLAND} 941-49 (G. Chase ed. 1888) (description of the crime of murder). For a fuller discussion of the \textit{Pukhtunwali}, see AHMED, \textit{ECONOMY AND SOCIETY}, supra note 92, at 89-97.

\bibitem{152} Haider, supra note 149, at 162.

\bibitem{153} \textit{Id.} at 163.


\bibitem{155} Haider, supra note 149, at 162. For a discussion of the modern application of the FCR (1901) in the tribal areas, \textit{see notes 192-202 and accompanying text infra.}

\bibitem{156} AHMED, \textit{SOCIAL AND ECONOMIC CHANGE}, supra note 79, at 8. The British had set up a string of fortifications along the border between the settled areas and the tribal territories to contain the tribes. \textit{Id.}

\bibitem{157} AHMED, \textit{ECONOMY AND SOCIETY}, supra note 92, at 92.

\bibitem{158} \textit{See discussion of a typical treaty at notes 129-35 and accompanying text supra.}
\end{footnotesize}
tribes under the treaties was to respect British interests and territory,\(^{159}\) in return for which the tribes received stipends,\(^{160}\) and governed their own affairs.\(^{161}\) The Political Agent's primary role was to contain his tribes\(^{162}\) and keep the peace both between the tribes and the British, and between different tribes.\(^{163}\)

B. Pakistan and the Tribal Areas

1. Constitutional Status of the Tribal Areas

Pakistan gained its independence from Great Britain under the Indian Independence Act of 1947.\(^ {164}\) Section 7 of that Act declares the lapse of "any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas."\(^ {165}\) The treaties between the British and the tribes having lapsed, Pakistan inherited no formal obligations to the tribes. Despite this fact, the Government of Pakistan elected to honor many of the treaties, and continues to do so.\(^ {166}\) Pakistan has also continued the British system of administering the tribes through Tribal Agencies.\(^ {167}\) In addition to the Tribal Agencies which were in existence in 1947, Pakistan has created three additional agencies which are similar in structure and function.\(^ {168}\) These agencies are the Mohmand Agency, created in 1951, and the Orakzai and Bajaur Agencies, both established in 1973.\(^ {169}\)

The tribal territory of the N.W.F.P. is divided into two types of administrative areas, one administered by the Federal Government and one administered by the Provincial Government.\(^ {170}\) The Provincially Administered Tribal Areas have the status of merged areas, i.e., they are in the process of transition from being tribal in nature to being settled.\(^ {171}\) Currently, the government of the N.W.F.P. is

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\(^{159}\) See notes 125-33 and accompanying text supra.

\(^{160}\) See note 128 and accompanying text supra.

\(^{161}\) See note 124 supra.

\(^{162}\) AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 45.

\(^{163}\) The agencies were created with little regard to ethnic configurations. As a result, tribes which had been in conflict since time immemorial were often in the same agency. Id. at 24.

\(^{164}\) India Independence Act of 1947, 10 & 11 Geo. 6, Ch. 30.

\(^{165}\) Id. § 7(1)(c). The treaties that were cancelled by Section 7 are reproduced in Aitchison, supra note 86, at 387-623.

\(^{166}\) AHMED, ECONOMY AND SOCIETY, supra note 92, at 308.

\(^{167}\) See AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 7.

\(^{168}\) Id.

\(^{169}\) Id. The Mohmand and Orakzai agencies were created from tribal territory which had not previously been incorporated into a particular agency. Id. at 31, 33. The Bajaur Agency was created from a remote subdivision of the Malakand Agency. Id. at 30. For a discussion of the Malakand Agency, see notes 142-43 and accompanying text supra. Malakand itself has the status of a merged area. See note 76 supra.

\(^{170}\) NYROP, supra note 4, at 216.

\(^{171}\) EXTENSION OF PROGRAMME, supra note 19, at 2. The British included the merged areas in the tribal territory, i.e., they lie outside the settled areas. The merged areas are more remote from the centers of administration than the settled areas. Id. The Government of Pakistan and the Provincial
making an effort to enforce Pakistan's narcotics laws in these areas, areas which have traditionally produced much of the opium in Pakistan. However, the more remote Federally Administered Tribal Areas, are largely governed by the Pakhtumwali and the Government of Pakistan has not enforced the narcotics ban there.

The Constitution of Pakistan sets forth in detail the limitations on the power of the Government of Pakistan over the tribal areas. The Federally Administered Tribal Areas fall under the executive authority of the Federal Government, as vested in the President. The control by the President is exclusive, and no Act of Parliament applies to a tribal area unless the President so directs. With respect to the tribal areas, the executive branch of the Federal Government carries out the legislative function. The President of Pakistan is empowered by the Constitution to make regulations for the governing of all or part of any tribal area. At any time, the President may also direct, by Presidential Order, that all or part of a tribal area cease to be a tribal area. In order to limit this power to eliminate a tribal area, the Constitution requires that the President first ascertain the view of the people of the tribal area concerned, as represented in the tribal jirga. However, the President has discretion as to the manner of ascertaining

Government of the N.W.F.P. are in the process of integrating the merged areas into the national life of Pakistan. See also, the discussion of narcotics control in Pakistan, § V infra.

172. Drug Abuse Control, supra note 4, at 5. See also, the discussion of narcotics control in Pakistan, § V infra.

173. Extension of Programme, supra note 19, at 5. The enforcement of the narcotics laws in the merged areas has begun to have an effect on poppy cultivation there. Gammelgaard, supra note 42, at 3. Gradual enforcement of the ban has steadily reduced the acreage under poppy cultivation in the merged areas. In the 1978-1979 growing season, 304,680 acres of opium poppies were grown in the merged areas. Extension of Programme, supra note 19, at 5. In 1979-1980 this was reduced to 9,500 acres. Poppy production in the merged areas is continuing, largely due to the fact that opium poppies generate high income, id., in an area where there is little irrigation and poor soil for farming. Drug Abuse Control, supra note 4, at 5-6. The United Nations, the United States, and the Federal Republic of Germany are or will be carrying out integrated rural development programs designed to eliminate the poppy as the main cash crop of the merged areas. See § VI infra.

174. The Federally Administered Tribal Areas include the agencies of Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan. Ahmed, Social and Economic Change, supra note 79, at 7. In addition to the agencies, certain smaller tribal regions, known as Frontier Regions, are also included in the Federally Administered Tribal Areas. Compare id., at 37 with Nyrop, supra note 4, at 216. These Frontier Regions adjoin the settled districts of Peshawar, Kohat, Bannu and Dera Ismail Khan. Ahmed, Social and Economic Change, supra note 79, at 37. Hereinafter, the term “tribal areas” will denote the Federally Administered Tribal Areas. The Provincially Administered Tribal Areas will be referred to as “merged areas”.

175. Drug Abuse Control, supra note 4, at 5.


177. Id. Part XII, Chapter 3, § 247.

178. Id. § 247(1) and (3).

179. Id. § 247(3).

180. See generally id. § 247.

181. Id. § 247(5).

182. Id. § 247(6).

183. Id.
the views of the people. 184 The Constitution similarly excludes the judiciary from the tribal areas. No court may exercise jurisdiction in relation to a tribal area. 185 Instead, the judicial function is divided between the executive branch and the tribal jirga. 186

2. Administration and Law Enforcement in the Tribal Areas

Locally, the administration of the tribal area is vested in the office of the Political Agent for each Tribal Agency, as it was under the British. 187 One commentator described the role of the Political Agent as "half-ambassador and half-governor." 188 The Agent, in his person, represents the government itself. 189 Due to the difficulty involved in administering a semi-autonomous people, much of the administration depends on the Political Agent's personality and relations with the tribes and tribal leaders. 190 Immediately below the Political Agent in the administrative structure of a typical tribal agency 191 is the Assistant Political Agent. 192 The next level is that of the Political Tehsildar, who supervises a number of Political Naib-Tehsildars. 193 "Each Political Tehsildar/Naib-Tehsildar is in charge of distinct tribes. As tribes in the Tribal Areas live within specific boundaries that correspond to geographical or physical areas, the Agency is divided both by tribe and area for purposes of administration." 194

The regular criminal, civil and revenue laws of Pakistan do not apply in the tribal areas. 195 The tribes conduct their own affairs through tribal law based on the Pukhtunwali. 196 However, the Frontier Crimes Regulation, 1901 (FCR), 197 which Pakistan inherited at the time of its independence, is applicable in the tribal areas. 198 The Political Agent is responsible for the enforcement of the FCR

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184. Id.
185. Id. § 247(7).
186. The tribal jirga decides cases which arise under tribal law. Ahmed, Economy and Society, supra note 92, at 90-91. Enforcement occurs largely through public opinion. Nyrop, supra note 4, at 160. See also note 124 supra. Cases decided under the FCR involve a wide scope of discretion by the Political Agent. The FCR allows the Agent general judicial authority to impose sentences for crimes committed under the FCR. Ahmed, Economy and Society, supra note 92, at 311.
187. See generally, Ahmed, Social and Economic Change, supra note 79, at 43-45. For a discussion of the Political Agent's role under the British, see § III A. 3 supra.
188. Id. at 43, citing J. Spain, The Way of the Pathans 24 (1972).
190. Id. at 44.
191. The administrative scheme outlined here is that of the Orakzai Agency as outlined in id. at 44-45.
192. Id. at 44. Most Tribal Agencies have two Assistant Political Agents. Id.
193. Id.
194. Id. at 45.
195. Id. at 43-44.
196. Id.
197. Nyrop, supra note 4, at 216.
and any other laws the President of Pakistan may make applicable to the tribal areas since the police of the N.W.F.P. do not enter the tribal areas. The Agent's only police forces inside of the agency are the Frontier Scouts of the Frontier Corps and the khassadars. In addition to these forces, the Political Agent could, in an emergency, call on units of the Frontier Constabulary which are stationed near the tribal areas. With these forces, the Political Officers in each agency are able to maintain peace between the tribes and ensure "that no law and order problem assumes uncontrollable proportions." However, in practice, the Political Agent's enforcement of the FCR is usually limited to the main roads and the agency headquarters.

Although the modern administrative structure of the tribal areas is similar to the structure which existed under the British, the attitude of the Pakistani Government toward the tribes is quite different from that of the British. One of the first steps the new government took after independence was the withdrawal of all troops posted along the border between the tribal areas and the.

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200. The police function in Pakistan is largely carried out on the provincial level. NYROP, supra note 4, at 343. The police forces of the N.W.F.P. do not enter the tribal areas because they have no jurisdiction there. Federal police forces such as the Frontier Corps police the tribal areas. See note 201 infra.
201. Id. at 43. The Frontier Corps is an auxiliary force of Pakistan's army. NYROP, supra note 4, at 388. Units of the Frontier Corps are located within the tribal agencies. Id. at 347. While most of the officers of the Frontier Corps are from the regular army, the force itself is composed entirely of locally recruited Pathans who are not, strictly speaking, army personnel. Id. at 388. While the Corps is available to the Political Agent, it is not directly under his command. Ahmed, Economy and Society, supra note 92, at 311.
202. The khassadars are a semi-official tribal police force. Ahmed, Economy and Society, supra note 92, at 363. The khassadars are under the direct command of the Political Agent. Id.
203. NYROP, supra note 4, at 347. The Frontier Constabulary is a police force of the Federal Government. The duties of the Constabulary include the prevention of tribal raids into the settled areas and prevention of smuggling and other illegal entry into the country. The Federal Government may also direct the Frontier Constabulary to assist other police forces. Id.
204. Ahmed, Social and Economic Change, supra note 79, at 44.
205. While the FCR gives wide judicial authority to impose punishment to the Political Agent, Ahmed, Economy and Society, supra note 92, at 311, the role of the Political Agent requires that problems be solved within the institutional and structural boundaries of the tribal society. Id. To rigidly enforce the FCR in the tribal areas would require the use of force against the tribes, which is seen as an admission that the Political Agent has failed to fulfill his role of working with the tribal society. Id.
206. See notes 137-48 and accompanying text supra.
207. See Ahmed, Economy and Society, supra note 92, at 99.
settled areas.\textsuperscript{208} The removal of this military barrier led to a greater identification of the people of the tribal areas with the state of Pakistan.\textsuperscript{209}

In the 1970's, the Government of Pakistan changed its tribal policy, causing an expansion of the Political Agent's role.\textsuperscript{210} In 1973, then-Prime Minister Bhutto began an economic program designed to modernize the tribal areas.\textsuperscript{211} This program involved the building of new roads, schools and dispensaries.\textsuperscript{212} As a result of these projects, the Political Agent has become the main force behind development and change, rather than merely the upholder of the status quo.\textsuperscript{213} The Political Agent is the project director of the Rural Works Programme in his agency.\textsuperscript{214} As both project director and the person responsible to the government for the tribes, the agent is involved in all aspects of the economic programs in his agency.\textsuperscript{215} A former Political Agent has suggested that the increasing demands upon the office of the Political Agent may lead either to a greater sharing of his responsibilities with local tribal councils or to a greater delegation of the Agent's responsibilities within the existing administrative framework.\textsuperscript{216}

3. The Tribal Areas and Pakistan's Narcotics Laws

The historical development of the tribal areas under the British and Pakistani governments sheds light on the particular problems facing any attempt to enforce Pakistan's ban on opium production in the tribal areas. The Pathans of the tribal areas, although identifying more closely with Pakistan than they did with British India,\textsuperscript{217} still live according to the Pukhtunwali.\textsuperscript{218} Pakistan, although not obligated to honor the treaties made by the British, has, for practical purposes, continued to honor them.\textsuperscript{219} The Government of Pakistan is relying on its social and economic programs to gradually bring the Pathans of the tribal areas into the mainstream of national life.\textsuperscript{220}

\textsuperscript{208} AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 8.
\textsuperscript{209} Id. at 9.
\textsuperscript{210} Id. at 44-45.
\textsuperscript{211} Id. at 9. The effect of this modernization program on the people and culture of the tribal areas is well described by Ahmed. Id.
\textsuperscript{212} Id. at 9.
\textsuperscript{213} Id. at 44.
\textsuperscript{214} Id. See also AHMED, ECONOMY AND SOCIETY, supra note 92, at 311.
\textsuperscript{215} AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79, at 44. For instance, Ahmed gives the example of a Public Works Department Engineer finding work on a road obstructed by a recalcitrant tribesman. In such a case, the engineer appeals to the Political Agent to use his influence to persuade the tribesman to allow construction to continue. Id.
\textsuperscript{216} Id. at 45.
\textsuperscript{217} See AHMED, ECONOMY AND SOCIETY, supra note 92, at 99.
\textsuperscript{218} Id. at 92.
\textsuperscript{219} Id. at 308.
\textsuperscript{220} See generally AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79. The economic programs in the tribal areas have begun to change attitudes among the Pathans. See generally AHMED, SOCIAL AND ECONOMIC CHANGE, supra note 79. A new breed of tribesman is emerging who is deviating from the ideal
Currently, the Government of Pakistan is not enforcing its narcotics laws in the tribal areas. One reason for this non-enforcement is the proximity of the tribal areas to the international border. Each of the tribal agencies borders Afghanistan, allowing tribesmen to elude law enforcement officers by crossing into that nation. Another reason for failure to enforce the narcotics ban in the tribal areas is the topography of the region. The tribal areas lie in a rugged mountain region which reaches an elevation of 15,620 feet above sea level and is largely inaccessible. A third, but perhaps the primary reason, is economic. Much of the tribal areas are economically depressed and farmers often rely on the poppy for survival.

Any enforcement of Pakistan's narcotics laws in the present structure of the tribal areas must be accomplished through the Political Agent, with the assistance of the Frontier Corps and Frontier Constabulary. However, in light of the difficulties outlined above, the likelihood is that enforcement of the narcotics ban, like enforcement of the FCR, will be limited to the main roads and the agency headquarters. At least for the near future, the main law in the tribal areas will continue to be the Pukhtunwali, which does not prohibit the growing of opium.

IV. INTERNATIONAL NARCOTICS CONTROL AND PAKISTAN

The international trade in opium and opium derivatives is governed by the terms of the Single Convention on Narcotic Drugs, 1961 and the 1972 Protocol Amending the Single Convention. Although Pakistan is a party to the Single Convention, it has not signed the Amending Protocol. As a result, the obligations of Pakistan under the existing control system arise solely under the Single Convention.
The Single Convention on Narcotic Drugs, 1961\textsuperscript{233} streamlined and updated the complicated and often conflicting system of international narcotics control that existed before 1961.\textsuperscript{234} At the end of the Second World War, six multilateral treaties governed the international control of narcotics.\textsuperscript{235} In addition to these treaties, three more were added during the post-war period.\textsuperscript{236} While each treaty further tightened the regulation of narcotics, the international system of control was obsolete as compared to the control efforts in most nations.\textsuperscript{237} Further, the treaties failed to provide for the effective control of opium poppy, coca and cannabis cultivation.\textsuperscript{238} The international narcotics control machinery which had developed concurrently with this myriad of treaties was “more complex than was desirable or necessary.”\textsuperscript{239} Four international organs existed which were concerned exclusively with narcotics control:\textsuperscript{240} the Commission on Narcotic Drugs,\textsuperscript{241} the Permanent Central Opium Board,\textsuperscript{242} the Drug Supervisory Body\textsuperscript{243} and the World Health Organization (WHO) Expert Committee on Drugs Liable to Produce Addiction. This machinery often overlapped and led to an uneconomical duplication of efforts.\textsuperscript{244}

\textsuperscript{233} Single Convention, supra note 3.


\textsuperscript{235} Id. at 776. These treaties were the International Opium Convention, 38 Stat. 1912, T.S. No. 612, 8 L.N.T.S. 187 (Jan. 23, 1912); International Opium Convention of 1925, 81 L.N.T.S. 317 (Feb. 19, 1925); Agreement Concerning Prepared Opium, 51 L.N.T.S. 337 (Feb. 11, 1925); Convention on Narcotic Drugs, 48 Stat. 1543, T.S. No. 863, 139 L.N.T.S. 301 (July 13, 1931); Agreement for the Control of Opium Smoking in the Far East, 177 L.N.T.S. 375 (Nov. 27, 1931); Convention on Illicit Drug Traffic, 198 L.N.T.S. 299 (June 26, 1936); listed in BRUNN, PAN & REXED, supra note 45, at 20-21.


\textsuperscript{237} Lande, supra note 234, at 779. Indeed, Lande points out that if the governments of the time had taken the treaties in force literally, a country could have allowed both the over-the-counter sale of raw opium, prepared opium, medicinal opium, cannabis and other narcotics and the unlicensed production of medicinal opium, prepared opium and hashish, along with the use of these drugs, without violating treaty obligations. Id. at 779-80.

\textsuperscript{238} See id. at 780. The Opium Protocol of 1953, supra note 236, contained provisions to control cultivation of the opium poppy. Lande, supra note 234, at 780. However, the Protocol also required the adherence of at least three of seven named opium-producing nations to come into force. Id. By 1961, only two of these, India and Iran, had ratified the Protocol. Id. Three others, Bulgaria, the Soviet Union and Yugoslavia, had declared that they would not ratify the treaty. Id.

\textsuperscript{239} Lande, supra note 234, at 778.

\textsuperscript{240} Id.

\textsuperscript{241} The Economic and Social Council of the U.N. established and gave permanent status to the Commission on Narcotic Drugs on Feb. 18, 1946. Waddell, International Narcotics Control, 64 AM. J. INT’L L. 310, 316-17 (1970) [hereinafter cited as Waddell].

\textsuperscript{242} The International Opium Convention of 1925, supra note 235, created the Permanent Central Opium Board.

\textsuperscript{243} The Convention on Narcotic Drugs (July 13, 1951), supra note 235, created the Drug Supervisory Body.

\textsuperscript{244} See Lande, supra note 234, at 778-79.
A. The Structure of International Control

The Single Convention terminated and replaced the provisions of most of the narcotics treaties in existence at the time it entered into force.\textsuperscript{245} It also consolidated and replaced the complex supervisory machinery. The Convention retained the Commission on Narcotic Drugs (CND) of the Economic and Social Council of the United Nations (ECOSOC) and outlined its functions.\textsuperscript{246} The Convention also consolidated the Permanent Central Opium Board and the Drug Supervisory Body into a new organ, the International Narcotics Control Board (INCB).\textsuperscript{247} Generally, the CND functions primarily as a policy making body, while the INCB gathers the information necessary for the CND to formulate policy.\textsuperscript{248}

1. The Commission on Narcotic Drugs

The Economic and Social Council of the United Nations (ECOSOC) gave the Commission on Narcotic Drugs permanent status in 1946.\textsuperscript{249} Under the Single Convention, the CND is a policy-making body which makes recommendations to the ECOSOC for the “implementation of the aims and provisions” of the Convention.\textsuperscript{250} The CND has thirty member nations,\textsuperscript{251} which the ECOSOC selects to serve four-year terms.\textsuperscript{252} The general criterion for selection is whether a nation is a producing and manufacturing country, a country with problems of illicit traffic in narcotics, or a country with a domestic drug addiction problem.\textsuperscript{253} After 1961, members of the specialized agencies and parties to the Single Convention, whether or not they were members of the United Nations, became eligible for CND membership.\textsuperscript{254} The CND meets on a biannual basis.\textsuperscript{255}

The functions of the Commission under the Single Convention are to amend

\textsuperscript{245} The Single Convention, \textit{supra} note 3, entered into force on Dec. 13, 1964. \textsc{Brunn, Pan \& Rexed, supra} note 45, at 20-21. The Convention terminated and replaced all of the treaties listed in notes 235 and 236, \textit{supra}, with the exception of the Convention on Illicit Drug Traffic (June 26, 1936), \textit{supra} note 235. Article 9 of the 1936 Convention was replaced by paragraph 2(b) of Article 36 of the Single Convention. \textit{See} Single Convention, \textit{supra} note 3, art. 44.

\textsuperscript{246} Single Convention, \textit{supra} note 3, art. 8.

\textsuperscript{247} Waddell, \textit{supra} note 241, at 317.

\textsuperscript{248} \textit{Note, Alternatives, supra} note 49, at 245-46.

\textsuperscript{249} Waddell, \textit{supra} note 241, at 316-17.

\textsuperscript{250} Single Convention, \textit{supra} note 3, art. 8(c).

\textsuperscript{251} \textit{Note, Alternatives, supra} note 49, at 245. In addition to the member nations, many non-member nations and international organizations send observers to CND meetings. Waddell, \textit{supra} note 241, at 317.

\textsuperscript{252} \textsc{Brunn, Pan \& Rexed, supra} note 45, at 300.

\textsuperscript{253} \textit{Id.} Pakistan is currently a member of the CND.

\textsuperscript{254} \textit{Id.}

\textsuperscript{255} \textit{Note, Alternatives, supra} note 49, at 245.
to Schedules\textsuperscript{256} to oversee the licit trade in narcotics,\textsuperscript{257} and to prepare draft recommendations concerning narcotic drugs for the ECOSOC.\textsuperscript{258} Since the Commission meets infrequently, it must rely on the Division of Narcotic Drugs (DND), which serves as the Secretariat of the CND, to perform many of its functions. The DND conducts research on narcotics problems\textsuperscript{259} and provides information both on scientific advances in the narcotics field and on the activities of the international control bodies.\textsuperscript{260} The DND also prepares the provisional agenda for meetings of the Commission.\textsuperscript{261}

2. The International Narcotics Control Board

The Single Convention created the International Narcotics Control Board (INCB) from two previously-existing control organs.\textsuperscript{262} Prior to the 1971 Amending Protocol,\textsuperscript{263} the INCB consisted of eleven members elected by the ECOSOC.\textsuperscript{264} The ECOSOC selected three of the members from a list of at least five persons with medical, pharmacological or pharmaceutical experience submitted by the World Health Organization (WHO).\textsuperscript{265} The remaining members were selected by the ECOSOC from a list of nominees submitted by members of the United Nations and parties to the Single Convention who are not U.N. members.\textsuperscript{266} The Amending Protocol expanded the membership of the INCB to its current size of thirteen members.\textsuperscript{267} The ECOSOC continues to select three members of this enlarged board from a list of nominees proposed by WHO and chooses the remaining ten from persons nominated by members and non-members of the United Nations.\textsuperscript{268}

Under the Single Convention, the INCB collects and examines the annual estimates of legal drug requirements.\textsuperscript{269} Parties to the Convention submit these

\textsuperscript{256}. Single Convention, \textit{supra} note 3, art. 8(a). The Single Convention assigned a narcotic drug to one of four schedules according to its dangerous propensities. For example, the Convention lists opium in Schedule I with other drugs considered to be most dangerous. The DND has the power to amend the Schedules in conjunction with the World Health Organization.
\textsuperscript{257}. \textit{Note, Alternatives, supra} note 49, at 245-46.
\textsuperscript{258}. \textit{Id}.
\textsuperscript{259}. \textit{See Brun, Pan & Rexed, supra} note 45, at 95-98. The research carried out by the DND includes both scientific research and studies on problems such as illicit traffic and drug addiction. \textit{See Id}.
\textsuperscript{260}. \textit{Id}. at 98. The DND publishes the Bulletin on Narcotic Drugs, which covers both areas of information. \textit{Id}.
\textsuperscript{261}. \textit{Note, Alternatives, supra} note 49, at 246.
\textsuperscript{262}. Waddell, \textit{supra} note 241, at 317. \textit{See also} notes 242-43, 247 and accompanying text, \textit{supra}.
\textsuperscript{263}. Amending Protocol, \textit{supra} note 17.
\textsuperscript{264}. Single Convention, \textit{supra} note 3, art. 9(1).
\textsuperscript{265}. \textit{Id}. art. 9(1)(a).
\textsuperscript{266}. \textit{Id}. art. 9(1)(b).
\textsuperscript{267}. Amending Protocol, \textit{supra} note 17, art. 2.
\textsuperscript{268}. \textit{Id}.
\textsuperscript{269}. Single Convention, \textit{supra} note 3, art. 9(1). Production, consumption and trade in narcotics is governed by the Single Convention to ensure a supply of narcotic drugs for medical and scientific purposes. \textit{See generally}, Single Convention, \textit{supra} note 3, Preamble.
estimates in accordance with Article 19. The INCB also collects and examines the statistical returns on production, consumption, imports, exports, seizures and stocks of drugs, which the signatories furnish under Article 20. However, the INCB is not merely a body for the mechanical recording of data. In examining statistics, the INCB looks for possible treaty violations. If it discovers a serious violation, the INCB can recommend to the other parties to the Convention that they stop the export or import of narcotic drugs for medical and scientific purposes to or from the offending nation. If a party which has not produced opium for export wishes to begin doing so, it must furnish certain information to the INCB. The country must supply information concerning its existing controls on trade and the countries to which it intends to export the opium. The INCB may either approve the new production or recommend to the Party that it not engage in such production.

B. Obligations of Pakistan Under the Single Convention

Under the Single Convention, parties are obligated to restrict the production, manufacture, export, import, distribution, use and possession of, and trade in, narcotic drugs to medical and scientific purposes, as provided in the Convention. Parties must establish or adjust their national legislation to conform to the Convention. Nations must also implement domestic programs for the licensing of manufacturers and wholesalers of narcotics, the issuing of permits and prescriptions for the dispensing of narcotic drugs, and the keeping of accurate records and reports concerning narcotics. The Parties must also devise stringent domestic controls. The Single Convention requires parties to: (1) furnish the INCB with statistics on the consumption of and estimates of the requirements for narcotic drugs; (2) maintain a system of export and import authorizations and certificates; (3) arrange for the treatment of addicts;
(4) cooperate with other nations and international agencies in combating illicit traffic;\textsuperscript{284} (5) extradite offenders for punishment;\textsuperscript{285} and (6) take measures to repress illicit domestic traffic in narcotics.\textsuperscript{286}

Under the Single Convention, Pakistan, as an opium producing nation, was required to assume additional obligations. Parties that permit the cultivation of the opium poppy for the production of opium must establish and maintain one or more specialized government agencies.\textsuperscript{287} The agency designates areas where opium poppies may be grown,\textsuperscript{288} grants licenses to cultivators,\textsuperscript{289} specifies the extent of cultivation permitted\textsuperscript{290} and takes physical possession of the opium crop or licensed cultivators within four months of the harvest.\textsuperscript{291} The agency has exclusive control over the import, export, wholesale trade and inventories of opium other than those stocks held by licensed manufacturers of opium alkaloids, medicinal opium or opium preparations.\textsuperscript{293}

The "transitional reservation" in Article 49 of the Single Convention temporarily excused from compliance those countries where the non-medical use of specified narcotics was traditional and permitted prior to January 1, 1961.\textsuperscript{294} In light of the traditional non-medical use of opium and cannabis in its country, the Government of Pakistan availed itself of the Article 49 reservation upon signing the Convention.\textsuperscript{295} Pursuant to the reservation, Pakistan temporarily permitted the quasi-medical use, production, manufacture and trade of opium, cannabis, cannabis resin, and extracts and tinctures of cannabis.\textsuperscript{296} However, Pakistan's obligations under the Single Convention are now in full effect since Article 49, paragraph 2, subparagraph (d) required that the quasi-medical use of opium be abolished within fifteen years of the coming into force of the Single Convention, i.e., by December 12, 1979.\textsuperscript{297}

\textsuperscript{284} \textit{Id.} art. 35.
\textsuperscript{285} \textit{Id.} art. 36.
\textsuperscript{286} \textit{Id.} art. 35.
\textsuperscript{287} \textit{Id.} art. 23(1).
\textsuperscript{288} \textit{Id.} art. 23(2)(a).
\textsuperscript{289} \textit{Id.} art. 23(2)(b).
\textsuperscript{290} \textit{Id.} art. 23(2)(c).
\textsuperscript{291} \textit{Id.} art. 23(2)(d).
\textsuperscript{292} Manufacturers are licensed under article 29, \textit{id.}
\textsuperscript{293} \textit{Id.} art. 23(2)(e). "Opium alkaloids" refers to morphine. Lande, \textit{supra} note 234, at 786.
\textsuperscript{294} INCB Report, 1979, \textit{supra} note 34, para. 10.
\textsuperscript{295} \textit{Id.} para. 12. Only five countries made transitional reservations under Article 49. Besides Pakistan, Argentina, Bangladesh, Burma and India took some of the transitional reservations allowed. For a list of these, see \textit{id.}
\textsuperscript{296} BRUNN, \textit{et rex}, \textit{supra} note 45 at 297 (Appendix A) (which contains a list of all Declarations and Reservations made to the Single Convention as of Dec. 31, 1967).
\textsuperscript{297} Single Convention, \textit{supra} note 3, art. 49(2)(d) as described in INCB Report, 1979, \textit{supra} note 34, para. 14.
V. Narcotics Control Efforts by the Government of Pakistan

A. Pre-1979 Efforts

Under British rule, persons could legally purchase opium in what is now Pakistan from licensed vend shops or "vends." This practice was continued after Pakistan's independence. After 1961, under the Article 49 transitional reservation, the vends continued to dispense opium for quasi-medical purposes. Although the government licensed the vends, the licensing generally proved unsatisfactory as a control mechanism, since the vends almost certainly dispensed not only opium grown legally, but also large quantities of the illegal harvest. Illegal cultivation of and traffic in opium flourished, primarily for economic reasons. Many unlicensed farmers continued to grow opium and sell the crop on the black market, where prices were far greater than those paid by the government.

At a time when Pakistan was still a part of British India, the Government of India participated in the International Opium Convention of 1925. Pursuant to the obligations the 1925 Convention imposed, the Government of India passed the Dangerous Drugs Act, 1930. This Act provided that no importation, exportation or transhipment of dangerous drugs was permitted except according to the rule adopted by the central government under Section 7(2) of the Act. The obligations of India as a party to the 1925 Convention devolved upon independence to both Pakistan and modern India. As a result, the

298. Ellis, supra note 52, at 696.
299. See EXTENSION OF PROGRAMME, supra note 19, at 7. See also note 42 supra.
300. See text accompanying notes 294-97 supra.
301. See EXTENSION OF PROGRAMME, supra note 19, at 7.
302. Id.
303. Under the Single Convention, licensed farmers in Pakistan grew legal opium and sold their crop to the government. See text accompanying notes 39-44 supra.
304. INCB Report, 1979, supra note 34, para. 89.
305. See EXTENSION OF PROGRAMME, supra note 19, at 4. The licensing of farmers took place only in the settled areas and did not apply in the merged and tribal areas. Id.
306. Edwards, An Eye for an Eye: Pakistan's Wild Frontier, 151 NAT'L GEOGRAPHIC, 111, 130 (Jan. 1977) [hereinafter cited as Edwards]. For example, a poppy farmer in lower Swat, a merged area, could, in 1976, make the equivalent of $400 on a good half-acre of poppies by selling his crop illegally. The average farm income in the area at that time was less than $200 per year. Id.
308. The Dangerous Drugs Act, 1930 was effective Feb. 1, 1931, by a notification in the Gazette of India, Part I at 35. See CHAUDHRY, TAX LAW STUDIES, STUDY NO. 8, THE DANGEROUS DRUGS (IMPORT, EXPORT AND TRANSHIPMENT) RULES, 1967, at 4 (1972) [hereinafter cited as CHAUDHRY].
309. "Dangerous Drugs" included coca leaf, hemp, opium, and all manufactured drugs. Id. at 6. 310. Id. at 4-5.
Government of Pakistan continued to enforce the Dangerous Drugs Act, 1930.312

In 1967, pursuant to the Single Convention on Narcotic Drugs and Section 7(2) of the Dangerous Drugs Act, 1930, Pakistan passed the Dangerous Drugs (Import, Export and Transhipment) Rules, 1967 (Rules).313 These Rules apply to the import into, the export out of and the transhipment through Pakistan of dangerous drugs.314 However, the Rules do not apply to the movement of such drugs between provinces or within a single province.315 The Rules conform to the obligations of Pakistan under Article 31 of the Single Convention (Special Provisions for International Trade).316 Article 31 requires and the Rules establish procedures for the promulgation of licensing requirements, the issuance of licenses and the enforcement of licensing rules.317 The Rules also include sample import and export license forms318 which would fulfill the requirements of Article 31.319

B. The Prohibition (Enforcement of Hadd) Order, 1979

Article 49(2)(d) of the Single Convention required Pakistan to abolish the quasi-medical use of opium by December 12, 1979.320 The Government of Pakistan had steadfastly maintained that this would be accomplished.321 In February 1979, President Zia, as part of the Islamization of Pakistan's laws,322 issued a Presidential Order323 prohibiting all imports, exports, processing and

312. The Dangerous Drugs Act, 1930 is still valid legislation in Pakistan. Gammelgaard, supra note 42, at 7.
314. Choudhry, supra note 308, at 5. For the purposes of the Rules, "dangerous drugs" is defined as the same as in the 1930 Act, supra note 309, except that it did not include prepared opium or diacetylmorphine. Id. at 6.
315. Id. at 5.
316. Single Convention, supra note 3, art. 31.
317. See generally, Choudhry, supra note 308, at 6-15. See also Single Convention, supra note 3, art. 31.
318. Choudhry, supra note 308, at 15-17.
319. Id.
321. Id. para. 17.
322. The Islamization of Pakistan's laws involves a return to the Shari'ah, the sacred law of Islam. Esposito, Perspectives on Islamic Law Reform: The Case of Pakistan, 13 N.Y.U.L. J. INT'L L. & POL. 217 (1980). The two material sources of the Shari'ah are the Quran, the literal revealed word of Allah, and the Sunnah of the Prophet, a narrative report of the sayings and deeds of the Prophet Muhammad. Id. at 218.
323. The opening statement of the Enforcement of Hadd reads:

Whereas it is necessary to modify the existing law relating to prohibition of intoxicants so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise
possession of intoxicants. Although the Chapters of the Enforcement of Hadd order speak primarily in terms of intoxicating liquors, Chapter One of the Order defines intoxicant as any article specified in the Schedule. The Schedule, in turn, includes opium and opium derivatives as defined in the Dangerous Drugs Act, 1930, and cannabis. Under the Enforcement of Hadd, “[a] complete ban has been imposed on production, possession, processing, manufacture, sale and use of all intoxicant drugs.” In addition to the Enforcement of Hadd Order, in June 1979, the Governor of the N.W.F.P. issued an order prohibiting poppy cultivation throughout that province.

C. Narcotics Enforcement in Pakistan

The primary agency involved in the coordination of narcotics control efforts in Pakistan is the Pakistan Narcotics Control Board (PNCB). The Government of Pakistan created the PNCB in March 1973, in order to satisfy obligations imposed by the Single Convention. The PNCB is a Department of the Ministry of Interior of the Pakistani Government. The PNCB has a number of duties, primarily of an advisory, supervisory and coordinating nature. As the primary Federal drug agency in Pakistan, the PNCB is involved in all aspects of drug abuse control, including law enforcement, agricultural development in poppy-growing areas and the treatment and rehabilitation of addicted persons. In executing programs in these areas, the policy of the PNCB is to involve the Provincial Governments as much as possible. The PNCB also

of all powers enabling him in that behalf, the President and Chief Martial Law Administrator is pleased to make the following Order: . . . .

Enforcement of Hadd, supra note 18, at 33.
324. See generally, Enforcement of Hadd, supra note 18, at 33-42.
325. Id. at 34. The Schedule is a list of intoxicants prohibited by the Enforcement of Hadd. Id. at 34, 41-42.
326. Id. at 41-42.
327. EXTENSION OF PROGRAMME, supra note 19, at 3.
328. INCB Report, 1979, supra note 34, para. 90. The N.W.F.P. ban on cultivation was successfully enforced in 1980 in the settled districts of the province. In 1981, the ban was enforced in the merged districts with varying degrees of success. GAMMELGAARD, supra note 42, at 3.
329. PAKISTAN PROFILE, supra note 4, at 4.
330. Id.
331. EXTENSION OF PROGRAMME, supra note 19, at 36.
332. EXTENSION OF PROGRAMME, supra note 19, at 2.
333. PAKISTAN PROFILE, supra note 4, at 4.
334. EXTENSION OF PROGRAMME, supra note 19, at 3.
negotiates with the United Nations and other countries for narcotics-related aid programs to Pakistan.336 The PNCB then coordinates these aid programs inside of Pakistan.337

The PNCB’s primary enforcement role is to compile intelligence information and forward it to Provincial and Federal enforcement agencies.338 The PNCB has regional offices in the capitals of each of Pakistan’s provinces.339 In addition to coordinating the law enforcement agencies, in 1974, the PNCB began to build a capacity to act as an enforcement agency itself.340 However, the program was hampered by insufficient resources.341 Originally, the PNCB planned to develop twenty-five Field Investigation Units (FIU)342 within six months.343 To date, the PNCB has established only thirteen FIUs.344 These units are stationed at strategic points on possible routes of narcotics traffic within the country.345 The problems of poor equipment and lack of adequate training has plagued Pakistan’s enforcement efforts. The FIUs remain poorly equipped and largely immobile.346 The PNCB has taken measures to provide training and equipment to increase the efficiency of Pakistan’s enforcement agencies in cooperation with the United States347 and the United Nations.348

One result of the 1979 ban on narcotics was the closing of the vends,349 depriving many of the drug dependent persons in Pakistan of their main source of opium.350 In 1979, the Government of Pakistan began a program to register all persons addicted to opium.351 Current estimates of the drug-dependent population in Pakistan range from 150,000 to 300,000 in a country of over

336. DRUG ABUSE CONTROL, supra note 4, at 31 (PNCB Charter). For a discussion of these programs, see § VI infra.

337. See DRUG ABUSE CONTROL, supra note 4, at 31.

338. GAMMELGAARD, supra note 42, at 7. The provincial enforcement agencies coordinated by the PNCB are the police forces, and the Excise and Taxation authorities of each province. The Federal agencies involved are the Customs Service, the Coast Guard, the Frontier Constabulary and the Rangers (an army auxiliary unit). EXTENSION OF PROGRAMME, supra note 19, at 31.

339. GAMMELGAARD, supra note 42, at 6.

340. Id. at 7.

341. Id.

342. Id. Each unit consists of approximately 29 officers. EXTENSION OF PROGRAMME, supra note 19, at 37.

343. GAMMELGAARD, supra note 42, at 7.

344. Id.

345. EXTENSION OF PROGRAMME, supra note 19, at 37. The distribution of the FIU’s is as follows: Islamabad, one unit; Sind Province, two units; Punjab Province, four units; N.W.F.P. five units; Baluchistan Province, one unit. Id.

346. Id. at 56-57.

347. U.S. aid programs are discussed in § VI.B infra.

348. U.N. aid programs are discussed in § VI.A infra.

349. See note 42, supra.

350. See Ellis, supra note 52, at 696.

351. INCB Report, 1979, supra note 34, para. 17.
eighty million people. The PNCB, with the assistance of the United Nations, has undertaken a number of programs designed to give medical treatment and vocational training to persons addicted to narcotics.

The efforts of the Government of Pakistan to combat the cultivation of and trade in opium and other narcotics have had a significant effect. Opium production has declined drastically since the 1979 bumper crop. This decline is the result of increased enforcement of the narcotics ban by the PNCB and local enforcement agencies coupled with a sharp decline in the price of opium. However, the long-term solution to the problem of opium cultivation does not lie in enforcement alone. Opium cultivation takes place in economically depressed areas of Pakistan. In order to effectively halt the opium cultivation in these areas, a viable economic alternative to the growing of the opium poppy is necessary. The situation requires capital intensive development programs in opium growing regions. Pakistan, as a developing country, lacks the resources to carry out such programs alone.

VI. Narcotics-Related Aid Programs to Pakistan from Outside Sources

A. United Nations Projects in Pakistan

United Nations projects in Pakistan are funded and coordinated by the United Nations Fund for Drug Abuse Control (UNFDAC). UNFDAC was first proposed by the United States in 1970. The United Nations established UNFDAC in April, 1971 as a special trust fund for the purpose of securing priority attention to urgent drug problems without diminishing the resources of other programs. Voluntary contributions from nations and private sources sustain the fund.

352. PAKISTAN PROFILE, supra note 4, at 3.
353. These programs are discussed in § VI.A infra.
355. PAKISTAN PROFILE, supra note 4, at 3. The price of raw opium has been depressed since mid-1979. See GAMMELGAARD, supra note 42, at 3. The low prices have been caused by a glut on the market since the 1979 bumper opium crop. Id. Gammelgaard estimates that the 1979 crop created a surplus of 400 metric tons of opium and that this surplus still exists. Id.
356. DRUG ABUSE CONTROL, supra note 4, at 5-6.
357. Prospects for the 1980's, supra note 1, at 71 (prepared statement of Mathea Falco).
358. DRUG ABUSE CONTROL, supra note 4, at 8.
359. See id. at 9.
361. BRUNN, PAN & REXED, supra note 45, at 18.
362. Id.
363. Id. at 109.
364. See id. at 18 and UNFDAC Report, 1980, supra note 360, Annex III. The United States has, in
replace, bilateral activities of nations involved in international narcotics control programs. However, UNFDAC projects are often the only narcotics control presence in a given country.

The program and budget of UNFDAC follow a two-tiered design. The first tier consists of country programs, which are development-oriented in nature and involve field work in those countries with major narcotics problems. The second tier consists of headquarters projects, which supplement the regular activities of the various technical bodies of the United Nations working in the narcotics field. UNFDAC gives priority to the country programs, which received sixty-eight percent of the total 1980 budget and an estimated seventy-nine percent of the 1981 budget. UNFDAC administers and coordinates the country programs which it funds. Agencies which have technical expertise in particular subject areas execute projects involving those subject areas.

Under the auspices of UNFDAC, the Division of Narcotic Drugs (DND) oversees projects involving law enforcement, research, and narcotics demand reduction. The DND is the largest single executing agency, receiving roughly one-third of all UNFDAC funds in 1980. Other UNFDAC executing agencies and the area of expertise of each include: the United Nations Educational, Scientific and Cultural Organization (UNESCO) (preventative education); the World Health Organization (WHO) (health and treatment); the International Labour Organization (ILO) (vocational rehabilitation); the International Narcotics Control Board (INCB) (training of national administrators); the Food and Agriculture Organization of the United Nations (FAO); and the United Nations.
Nations Development Programme (UNDP) (agricultural development projects).376

A large component of certain UNFDAC country programs is in the form of integrated rural development.377 UNFDAC officials believe such development is essential to the long-term solution of the problem of illicit cultivation of the opium poppy, the coca bush and cannabis.378 Integrated rural development utilizes crop substitution, in conjunction with other programs, in an effort to provide viable economic alternatives for persons who have previously relied on the opium poppy as their main cash crop.379 The first step of an UNFDAC integrated rural development project is the establishment of a pilot project.380 The purpose of the pilot project is to develop social and economic programs which suit the needs of a particular narcotics-producing area.381 Once the pilot project is completed, UNFDAC analyzes the results and expands the project, utilizing the lessons learned.382 The ultimate goal of both integrated rural development and the other aspects of an UNFDAC country program is to provide a comprehensive and effective solution to the narcotics problems throughout the host country.383 Successful pilot projects have demonstrated the feasibility of the concept.384 One of the two successful projects is the pilot project in the Buner subdivision of the District of Swat, a merged area in Pakistan’s N.W.F.P.385

The UNFDAC country program in Pakistan has been in operation since
1976. The program is coordinated with the Pakistan Narcotics Control Board. The program is assisting Pakistan in developing crop substitution in Buner, in treating and rehabilitating addicts in both rural and urban areas and in supporting law enforcement activities aimed at stemming the illegal traffic in narcotics. The executing agencies involved in the Pakistan program are the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the United Nations Development Programme (UNDP) and the World Health Organization (WHO).

The accomplishments of UNFDAC in Pakistan have been considerable. UNFDAC has expanded its programs as a result of the 1979 ban on narcotics in order to assist the greater numbers of opium addicts and poppy farmers in need of the rehabilitation and rural development programs. The Buner pilot project is the primary component of the UNFDAC program in Pakistan. The objective of the Buner project is to develop a realistic economic alternative to poppy cultivation. Towards this end, the project has attempted to divert the rural economy of Buner away from dependence upon opium as the main cash crop. Project developers have placed emphasis on increasing the yield of grain crops already grown in the area and on introducing new cash crops into the area.

The Buner area suffers from a shortage of surface water. To overcome this
barrier to successful crop substitution, the Buner project included construction of tubewells to expand ground water resources and several new surface irrigation programs. The Buner project also included land development efforts, such as land leveling and terrace construction. These land development efforts are dual-purpose: to bring new acreage under cultivation and to guarantee maximum use of irrigation water through the prevention of water run-off. UNFDAC has also established an agricultural credit scheme in Buner to provide short and long-term credit to farmers who agree to stop growing opium. Loans to farmers under this scheme totalled over $100,000 by September 1980. Farmers use the money received from the credit scheme for leveling land and purchasing livestock.

The UNFDAC country program in Pakistan also includes medical treatment and vocational rehabilitation programs for drug-dependent persons. Under this program, addicts have received medical treatment at ten detoxification centers throughout the country. These centers have been successful in developing techniques for the medical treatment of addicts. The rehabilitation component of the Pakistan program, although largely experimental, has established the viability of vocational training and job placement programs for former addicts in Pakistan. Vocational rehabilitation centers located in Karachi...
and Hyderabad, operate in close cooperation with the detoxification centers in those cities.\textsuperscript{413} Another vocational center in Nowagai is an integral part of the Buner project.\textsuperscript{416} This center cooperates with the detoxification center in Chamla.\textsuperscript{417}

The efforts of UNFDAC and the PNCB are continuing. UNFDAC extended the Buner pilot project, which was scheduled to end in 1981, for an additional three years.\textsuperscript{418} Under the planned expansion, UNFDAC will increase the efficiency of the pilot activities and expand the segment of the population served by the programs.\textsuperscript{419} The extended program contemplates additional projects in resource development and conservation, agricultural production of crops and livestock, development of additional credit schemes, marketing improvements, road construction and water system management.\textsuperscript{420} The medical treatment and rehabilitation components of the program are also being expanded.\textsuperscript{421} New projects are underway in the areas of law enforcement\textsuperscript{422} and preventive education concerning drug abuse.\textsuperscript{423}

The UNFDAC programs in Pakistan, especially the rural development project in Buner, have served as a starting point for eliminating cultivation of the opium poppy in Pakistan.\textsuperscript{424} The United Nations has suggested that similar assistance be initiated through bilateral aid from individual nations.\textsuperscript{425}

B. United States Projects in Pakistan

In 1979, the U.S. Department of State and the Drug Enforcement Administration (DEA) believed that the inability to control opium production in Southwest Asia represented the most serious heroin threat to the United States in recent years.\textsuperscript{426} As a result of the increasing flow of opium and heroin from Pakistan, the U.S. government intensified its aid to Pakistan in an effort to bolster the

\textsuperscript{415} Id. at 19.
\textsuperscript{416} See Extension of Programme, supra note 19, at 17; UNFDAC Report, 1980, supra note 360, para. 57.
\textsuperscript{417} GAMMELGAARD, supra note 42, at 19.
\textsuperscript{418} UNFDAC Report, 1980, supra note 360, para. 56. UNFDAC made the extension on the basis of a mission to Pakistan in mid-1980 by representatives from the FAO, UNDP and UNFDAC. Id.
\textsuperscript{419} Id.
\textsuperscript{420} Id. UNFDAC assistance over the three years will total approximately $4.18 million, while the Government of Pakistan will contribute 8.0 million rupees. DRUG ABUSE CONTROL, supra note 4, at 13. 1 rupee equals .0976 U.S. dollars. Wall St. J., March 8, 1982, at 41, col. 1.
\textsuperscript{421} GAMMELGAARD, supra note 42, at 30. This expansion involves an UNFDAC expenditure of $670,760 and a government contribution of 2,732,000 rupees. Id.
\textsuperscript{422} DRUG ABUSE CONTROL, supra note 4, at 16. UNFDAC will provide approximately $1.5 million to support law enforcement efforts of the PNCB. Id.
\textsuperscript{423} GAMMELGAARD, supra note 42, at 30.
\textsuperscript{426} Federal Drug Strategy — 1979, supra note 2, at 8.
Pakistani campaign to combat the illicit cultivation of and trade in opium. The United States has long occupied a leading role in the international drug control field. The basic objectives of the U.S. efforts in Pakistan are the suppression of opium production, processing and trafficking to the greatest extent possible. In pursuit of this goal, the United States has encouraged the Government of Pakistan to enact stricter narcotics control legislation and to increase the authority of the Pakistan Narcotics Control Board. The United States has also established, or plans to establish, a number of programs designed to increase the law enforcement capabilities of Pakistan, to finance studies of drug abuse in Pakistan and to provide resources for income replacement and rural development to solve the problems caused by continuing opium cultivation in the N.W.F.P.

1. Law Enforcement Assistance

The two principle agencies of the U.S. government involved in enforcement assistance programs in Pakistan are the Drug Enforcement Administration (DEA) and the Bureau of International Narcotics Matters of the U.S. Department of State (INM). The DEA has assigned special agents to Pakistan since 1972, and five DEA agents are currently assigned to Pakistan; three are in Islamabad and two are in Karachi. The INM assigned a full-time narcotics officer to the U.S. embassy in Islamabad in September 1979.

427. See Prospects for the 1980's, supra note 1, at 98.
428. The U.S. originally began pushing for a serious international effort to curb opium in 1906, when Congress discovered that a serious opium problem existed in the Philippines (which had been acquired by the U.S. after the Spanish-American War). BRUNN, PAN & REXED, supra note 45, at 10. U.S. diplomacy resulted in the International Opium Convention of 1912, see note 235, supra Id. at 11. Between the First and Second World Wars, the U.S. initiated the Geneva Conference of 1924 and the 1936 Convention on Illicit Traffic (see note 235, supra) see id. at 134-38.

Since World War II, the United States has increasingly used its vast resources to ensure that other countries implement narcotics control efforts. Id. at 141. By granting or withholding bilateral aid to other nations, the United States has been able to motivate these nations to take action against illicit drug traffic. Id. at 147. See also Note, U.S. Bilateral and Multilateral Aid to Nations Which do not Cooperate with the United States to Combat International Drug Traffic, 7 J. INT'L L. & POL. 361 (1974). The United States has also signed numerous bilateral agreements with other nations concerning narcotics. BRUNN, PAN & REXED, supra note 45, at 143-45. See also note 48 supra (concerning bilateral opium eradication efforts between the United States and Mexico).

429. PAKISTAN PROFILE, supra note 4, at 6.
430. Id.
431. Id.
432. Id.
433. See generally id. at 5-6.
434. Id. at 5.
435. Letter from Herbert Rathner, Program Officer, Asian Division, Bureau of International Narcotics Matters, U.S. Department of State, to the author (Feb. 26, 1982) [hereinafter cited as Rathner].
436. Id. Much of the opium and heroin entering the illegal traffic in narcotics from Pakistan passes through Karachi, which is a port city on the Indian Ocean. See § II supra.
437. PAKISTAN PROFILE, supra note 4, at 5.
The United States and the Government of Pakistan signed the POKER agreement on May 12, 1980. This agreement provides funds for the development of a specialized narcotics unit within the Pakistan Customs Service. The agreement provides this unit with vehicles and other equipment and specialized training. The two countries intend the unit to detect and halt illegal narcotics trafficking both within Pakistan and at the borders.

Training of Pakistan’s enforcement officers was the subject of a 1980 U.S.-Pakistan agreement. This agreement provided funds for the training of Pakistan’s enforcement officers both in Pakistan and in the United States. The parties amended the agreement in 1981. The training in Pakistan takes place primarily at the Narcotics Law Enforcement Training School. The training agreements provided funds to purchase equipment for the school. The actual training has been conducted by instructors from Pakistan and from the DEA and the United States Customs Service. In the first year of its operation, the school trained 425 Pakistani enforcement officers from the PNCB, Pakistan Customs, Coast Guards, Excise, Provincial Police forces and the Frontier Constabulary. The training program in Pakistan has also included a boat handling course for customs personnel in Karachi.

Training in the United States under the agreements consists of study tours to examine certain aspects of narcotics control in the United States. The Bureau of International Narcotics Matters has also agreed to provide the PNCB with $70,000 for the establishment of a forensic laboratory in Islamabad. The laboratory will allow the PNCB to chemically examine drugs seized in Pakistan.

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438. Rathner, supra note 435.
439. Id. The Poker agreement provides $150,000 for this purpose. Id. The Pakistan Customs Service is one of the law enforcement agencies coordinated by the PNCB. See note 325 supra.
440. PAKISTAN PROFILE, supra note 4, at 6.
441. Rathner, supra note 435.
442. Id.
443. Id. The agreement totals $160,000. Id.
444. Id.
446. PAKISTAN PROFILE, supra note 4, at 6.
447. DRUG ABUSE CONTROL, supra note 4, at 15.
448. PAKISTAN PROFILE, supra note 4, at 6.
449. DRUG ABUSE CONTROL, supra note 4, at 15.
450. Rathner, supra note 435.
451. DRUG ABUSE CONTROL, supra note 4, at 15. In 1980, two study tours visited the United States. One tour studied enforcement in the U.S. and included the Inspectors general of the N.W.F.P. and Baluchistain, two senior officers of the Pakistan Customs Service, and the Commandant of the Frontier Constabulary. Id. Another tour included four members of the National Coordination Committee of the PNCB and studied drug abuse control programs in the U.S. Id. The amended training agreement provides for twelve study tours to examine narcotics law enforcement, detoxification and rehabilitation in the United States. Id. at 16.
452 PAKISTAN PROFILE, supra note 4, at 6. The INM provided $20,000 for this project. Id.
453. DRUG ABUSE CONTROL, supra note 4, at 17.
The findings of the laboratory will provide scientific evidence for legal proceedings against those involved in illegal drug trafficking in Pakistan. To be effective, a comprehensive drug control program in Pakistan requires that the Government of Pakistan know of the drug abuse situation in the remote areas of the country. To assist the PNCB in obtaining this knowledge, the INM provided funds in 1980 for a study of drug abuse and related socio-economic factors in Gilgit in the Northern Areas of Pakistan.

2. Development Aid Programs

The Government of Pakistan is increasing its enforcement of the narcotics ban in the merged areas, resulting in economic harm to the opium farmers there. As a result of this harm and the success of the UNFDAC pilot project in Buner, opium farmers in other merged areas have demanded development assistance programs. In response to this problem, the INM has provided funds for an agricultural outreach program. The program provides seed, fertilizer and implements to farmers in the merged areas of Dir, Swat and Malakand. In 1981, the program introduced high yielding crops into selected demonstration plots in these merged areas. The INM plans to eventually extend the program to the entire merged areas of the N.W.F.P.

The INM is currently involved in establishing an integrated rural development project in the Malakand Agency, a merged area. As envisioned, the project will be similar to UNFDAC's Buner project. In November 1981, the INM sent a three person team to the Malakand Agency to choose a site for the program. The team chose a site and the INM is sending another team to Malakand for six to eight weeks to develop a project design. The INM expects the United States and Pakistan to sign during the 1982 fiscal year.

454. Id.
455. Id.
456. Id. at 19.
457. PAKISTAN PROFILE, supra note 4, at 6. The INM provided $65,000 for the Gilgit Survey. Id.
458. DRUG ABUSE CONTROL, supra note 4, at 5.
459. Id. at 6, 8.
460. See § VI.A supra.
461. DRUG ABUSE CONTROL, supra note 4, at 22.
462. PAKISTAN PROFILE, supra note 4, at 6. The INM provided $140,000, for the program. Id.
463. DRUG ABUSE CONTROL, supra note 4, at 23.
464. Id. at 22-23.
465. Id. at 23.
466. Id. at 24.
467. The project components agreed upon include water resource development, road improvement, livestock rearing, crop substitution, land levelling and terracing. Id.
468. Telephone interview with Herbert Rathner, Program Officer, Asian Division, Bureau of International Narcotics Matters, Department of State (Dec. 18, 1981).
469. Rathner, supra note 435.
470. Id. The estimated cost of the Malakand project is $1,350,000. PAKISTAN PROFILE, supra note 4, at 6.
C. Projects in Pakistan by the Federal Republic of Germany

The Federal Republic of Germany has recently begun to fund narcotics-related programs in Pakistan. The major German project is a rural development project in the Gadoon area of the Swabi subdistrict of the Mardan District in the N.W.F.P. Although Gadoon lies in Mardan, one of the settled districts of the N.W.F.P., it has the status of a merged area. Poppy cultivation in Gadoon is extensive. A team of German experts visited the Gadoon area and the PNCB has developed a project outline. The Gadoon project will be similar to the Buner project and the developing U.S. project in the Malakand Agency. The PNCB expects the project to commence in 1982.

The Federal Republic of Germany is also providing funds for a national drug abuse survey in Pakistan. The purpose of the survey is to measure the extent of drug abuse in Pakistan, in order to provide the PNCB with the information necessary to design and implement a national program to combat drug abuse.

VII. Controlling Opium Cultivation in the Tribal Areas: Recommendations

The comprehensive approach of the Government of Pakistan to narcotics control embraces legislative measures, law enforcement efforts, drug treatment programs and integrated rural development. Within this approach lie the seeds of a solution to the problem of illicit opium cultivation in Pakistan. Pakistan is gradually extending enforcement of its narcotics laws into the merged areas of the N.W.F.P. Continued and increased multilateral and bilateral aid is essential if this extension is to continue. However, opium cultivation and heroin manufacture continue unabated in the tribal areas. The Government of Pakistan has taken the position that the basic solution to the problem lies in income substitution for poppy farmers, coupled with enforcement procedures.

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472. Id. at 23-24.
473. Extension of Programme, supra note 19, at 73.
474. Drug Abuse Control, supra note 4, at 23. In the 1980-1981 growing season, the Gadoon region produced 35 metric tons of illegal opium, more than 41% of the total illegal crop in Pakistan in that year. Id.
475. Id. at 24.
476. Id.
477. See id. The PNCB estimates that the Gadoon project will cost $10,000,000. Id.
478. Id.
479. Id. at 19-20. Pakistan and the Federal Republic of Germany signed the agreement in September 1981. Id. The agreement provides DM 400,000 for the survey. Id. One DM equals .4269 U.S. dollars.
480. Drug Abuse Control, supra note 4, at 20.
481. See id.
482. Id. at 5.
483. See Gammelgaard, supra note 42, at 4 and Extension of Programme, supra note 19, at 4.
ever, the semi-autonomous status of the tribal areas has prevented the narcotics laws from being enforced there.\textsuperscript{485}

Opium control programs in the tribal areas require an approach tailored to meet the problems created by the unique status of the region. The inhabitants of the tribal areas have historically resented and opposed the imposition of outside authority.\textsuperscript{486} One possible means of eliminating or at least reducing opium cultivation in the tribal areas\textsuperscript{487} is the use of integrated rural development programs administered through the existing administrative structure of the tribal areas.\textsuperscript{488} Such an approach would utilize an outside influence to which the tribes are accustomed, while avoiding the appearance of a new outside threat to the tribal way of life. Such a program could be successful if the sponsoring agency or country, through the Government of Pakistan, approached the Pathans of the tribal areas through the Political Agent of each Agency.\textsuperscript{489} The agent would then present the proposal to the tribal \textit{jirga}.\textsuperscript{490} The agent would present any proposal for rural development in terms of the economic benefits to be received from the program, rather than in terms of the illegality of growing opium. The \textit{jirga} may be more receptive to the offer of a rural development program after the economic advantages of the program have been demonstrated.\textsuperscript{491} Once the Government of Pakistan, with multilateral and bilateral assistance, has initiated development programs, the Political Agent could administer and coordinate the programs, much as they have administered the economic programs of the past few years.\textsuperscript{492}

The problem of finding a viable economic alternative to growing opium remains. The planners of possible rural development programs for the tribal areas should consider the success of the UNFDAC pilot project in Buner.\textsuperscript{493} The Buner project, the projected U.S. sponsored program in the Malakand Agency and the Federal Republic of Germany’s Gadoon project, all involve the Pathans

\begin{footnotes}
\item \textsuperscript{485} See \textit{Drug Abuse Control}, supra note 4, at 5.
\item \textsuperscript{486} See \textit{Ahmed, Economy and Society}, supra note 92, at 93.
\item \textsuperscript{487} This solution has been suggested by Akbar S. Ahmed, former Political Agent for South Waziristan. Ahmed Interview, \textit{supra} note 81.
\item \textsuperscript{488} For a discussion of integrated rural development programs in the merged areas of Pakistan, see \textsection VI supra.
\item \textsuperscript{489} For a discussion of the role of the Political Agent in the modern tribal areas, see \textsection III.B.2 supra.
\item \textsuperscript{490} For a discussion of the role of the tribal \textit{jirga}, see \textsections III.A.3 and III.B.1 supra.
\item \textsuperscript{491} For a discussion of the economic advantages for opium farmers in Buner who abandon opium cultivation, see \textit{Gammelgaard}, supra note 42, at 10-11. See also notes 397-99 and accompanying text supra.
\item \textsuperscript{492} For a description of the economic programs in the tribal areas and the role of the Political Agent, see generally \textit{Ahmed, Social and Economic Change}, supra note 79. See also \textit{Ahmed, Economy and Society}, supra note 92, at 310-11.
\item \textsuperscript{493} For a discussion of the Buner pilot project, see \textit{Gammelgaard}, supra note 42, at 8-15. See also \textit{Extension of Programme}, supra note 19, at 9-14 and notes 381-95 and accompanying text supra.
\end{footnotes}
of the merged areas. These projects will provide a model for such projects in the tribal areas.

The success of these projects may be influential in government negotiations with the jirgas of the tribal areas. The Government of Pakistan, in attempting to accompany rural development in the tribal areas with enforcement of Pakistan’s narcotics laws, should emphasize the Islamic nature of those laws, rather than the illegality of growing opium. The fervent Islamic faith of the Pathans of the tribal areas should make them more receptive to arguments of a religious and moral nature as opposed to a legal one.

The social and economic status of the tribal areas has been changing due to the many programs implemented by the Government of Pakistan in recent years. The Pathans of the tribal areas have identified more closely with the Islamic Republic of Pakistan than they did to British India. However, change comes slowly among the Pathans, thus preventing a speedy solution to the problem of illegal opium cultivation in the tribal areas. Only if the Government of Pakistan and the assisting international organizations and foreign governments carefully plan and tailor development programs to suit the needs of the tribal areas, will they achieve a long-term solution to the problem. A solution based on an economically viable alternative to opium cultivation and administered through the Political Agents and the tribal jirgas may put an end to illicit opium cultivation. At the same time, such a program could become an integral part of the overall programs designed to bring the tribal areas into the national life of Pakistan.

VIII. Conclusion

The 1979 bumper crop of opium in Southwest Asia resulted in an increased flow of high quality heroin into the United States and Western Europe. In 1979, pursuant to its obligations under the Single Convention on Narcotic Drugs, 1961, the Government of Pakistan imposed a total ban on the production and

494. Compare Drug Abuse Control, supra note 4, at 7 (map of the districts of the N.W.F.P.) with NYROP, supra note 4, at 125 (map of Pathan tribes of the N.W.F.P.).

495. In particular, such an approach should emphasize the doctrine that the Holy Quran forbids any substance causing detachment from reality. Illicit Drug Traffic, 1981 Report, supra note 57, para. 18 (concerning the Islamic nature of Iran’s anti-narcotics laws.).

496. For a description of the Islamic faith of the Pathans, see Ahmed, Economy and Society, supra note 92, at 105-07.

497. See generally Ahmed, Social and Economic Change, supra note 92.

498. See Ahmed, Economy and Society, supra note 92, at 99.

499. Id. at 94.

500. Compare Ahmed, Social and Economic Change, supra note 79 (describing generally the necessity of tailoring economic programs to the unique needs of the tribal areas) with Pakistan Profile, supra note 4, at 1 (reiterating the position of the Government of Pakistan that enforcement of the narcotics laws is not possible until opium farmers are provided with viable economic alternatives).

501. See generally Ahmed, Social and Economic Change, supra note 79.
use of narcotics. However, farmers still cultivate opium in the economically depressed tribal areas of Pakistan's Northwest Frontier Province. Pakistan does not enforce its narcotics ban in these tribal areas due to a number of historical events which resulted in semi-autonomous status for the tribes in this region. The tribes retain this status, although their traditional distrust of outsiders is diminishing in the face of social and economic modernization programs carried out by the Government of Pakistan in the tribal areas.

The Single Convention on Narcotic Drugs, 1961 governs the international control of narcotics. Efforts by the Government of Pakistan to meet its obligations under this treaty have resulted in a marked decline in opium cultivation outside the tribal areas. In its efforts, Pakistan has been assisted by the United Nations Fund for Drug Abuse Control, the United States and the Federal Republic of Germany. This assistance has primarily taken the form of enforcement aid and integrated rural development. Development assistance has succeeded in finding viable economic alternatives to opium cultivation in certain merged areas of the Northwest Frontier Province. With additional outside assistance, the Pakistan Narcotics Control Board is expanding development assistance to other merged areas. However, the Pakistan Narcotics Control Board does not envision similar programs for the tribal areas in the immediate future.

Pakistan's tribal areas pose unique problems for international narcotics control. With multilateral and bilateral assistance, the Government of Pakistan can overcome these problems by utilizing the concept of integrated rural development. However, the parties involved must tailor these development programs to the unique nature of the tribal areas. Such rural development programs can overcome the difficulties presented by the tribal areas and end the cultivation of opium in Pakistan.

Jack W. Murphy