Introduction
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During the peak period of colonization in the sixteenth and seventeenth centuries, the colonial powers administered their colonies purely in self-interest, caring little for the material and moral uplift of the natives. In fact, the natives were subjected to ruthless exploitation, torture, oppression, cruelty and indignity. However, in the second half of the eighteenth century, some theologians, philosophers and politicians, whose conscience pricked, raised their voice against inhuman treatment of the natives by the colonial powers. Through their efforts the moral conscience of the colonizers was gradually awakened to the point of their beginning to appreciate that the natives deserved to be treated better and that in the long run the development of the colonies and progress of the inhabitants would ultimately be beneficial to themselves also.

However, as a guiding principle of government policy the concept of trusteeship may be traced back to the marathon parliamentary discussions held in Great Britain in the second half of the eighteenth century on the question of the abolition of slave trade. Edmund Burke, who took active part in these debates, is generally credited with the formulation for the first time of the 'trusteeship' concept of colonialism, a

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concept which has been at the basis of all enlightened colonial thinking since then. In a speech in the House of Commons on 'Fox's India Bill' Burke defined the 'trusteeship' principle of colonialism in the following words:

(...)All political power which is set over men...ought to be some way or other exercised ultimately for their benefit. If this is true with regard to every species of political dominion...then such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a trust; and it is the very essence of every trust to be rendered accountable; and even totally to cease, when it substantially varies from the purposes for which alone it could have a lawful existence. 2

This speech of Burke contained three revolutionary ideas; firstly, it described every political domination as a 'trust'; secondly, the trustee had to render an account of how the 'trust' was being discharged; and, thirdly, under some circumstances, the 'trust' could cease also. These ideas continued to develop till finally it also began to be widely recognized that the native communities or colonial possessions had the ultimate right to become autonomous or independent as soon as they became politically mature. As a result of this new thinking the United States Congress, in 1898, recognized the right of Cuba to independence in the following words:

That the people of the island of Cuba are, and of right ought to be, free and independent. 3


3 Public Resolution No. 21 dated 20 April 1898, Papers (Contd. on next page)
After four years of temporary occupation, the United States, in fact, did withdraw its forces from there. Again, in 1899, the American Senate announced the intention of the United States to establish in the Philippines "a government suitable to the wants and conditions of the inhabitants of the said islands and to prepare them for local self-government..." The idea of international trusteeship got further encouragement when President McKinley of the United States lent his helping hand in his annual message to the Congress dated the 3 December 1900 in which he described the American possession of Philippines as an "unsought trust which should be unselfishly discharged." He also referred to the Filipinos as "the wards of the nation" and to the task of the United States in Philippines as an "obligation as a guardian". In 1901, the United States Supreme Court also held that Cuba was a territory held "in trust" for the inhabitants of Cuba. All these cases, isolated though they were, helped in the practical consolidation of the idea of


Resolution dated 14 February 1899 of the United States Senate (cited in LN Publication, op. cit., p. 11).


Ibid.

trusteeship.

A great step forward was taken in the development of the trusteeship idea when it was incorporated into several important international conventions. Two of these might be mentioned - the General Act of the Berlin-African Conference of 1885 and the General Act of the Conference of Brussels of 1890. The former of these two Acts was noteworthy for producing a direct precedent for the mandate system in the form of a mandate from the Powers to King Leopold of Belgium to administer the Congo basin. The latter Act made specific stipulation that efforts would be made "to improve the moral and material conditions of existence of the native races". However, both these Acts provided no means for enforcing the stipulations that they contained. Due to the absence of supervisory machinery, various clauses of these Acts were inadequately observed.

Two parliamentary Acts into which the trusteeship concept found its way might also be mentioned. The Belgian Act of Parliament, adopted on 8 September 1908, set up for the Congo a detailed system of national trusteeship, while

9 Ibid., p. 104.
10 Ibid., p. 105.
the British Act of Parliament adopted on the 20 September 1909 which constituted the Union of South Africa, incorporated a detailed draft mandate containing the conditions on which the Union of South Africa must govern any native British territories that might be transferred to it under the said Act.

However, the first clear outline of the slowly emerging mandate system appeared in a memorandum issued by the (British) Independent Labour Party on 28 August 1917. It proposed the adoption of the mandates system, that is, administration by individual European states under the supervision of an international commission. The proposal of the British Independent Labour Party regarding the mandates system was adopted by the Inter-Allied Labour and Socialist Conference in London on 23 February 1918. The Conference proposed for German Colonies a system of control established by international agreement under the League of Nations and maintained by its guarantee which, whilst respecting national sovereignty, would take into account the wishes of the natives, safeguard their rights and interests, including their land rights and preserve the 'open door'. A similar system was envisaged for Turkish territories. Here we see that the

13 The Times (London), 29 August 1917, p. 8.
14 Ibid., 25 February 1918, p. 3.
Mandates System of the League, in its main essentials, is foreshadowed for the first time in public declarations.

In November 1918, the British Foreign Office prepared a memorandum for the consideration of the British Government. It contained a plan for the setting up of the League of Nations, which later served as a basis for the British draft of the Covenant. Its mandates paragraph was as follows:

The treaty should give precision to the idea of the responsibility of the civilised States to the more backward peoples. Trusts or, to speak more precisely, charters should be drawn up for the various territories for whose future government the signatory Powers have to issue a mandate, and particular areas handed over to individual States who would be responsible to the League for the discharge of that mandate. Arrangements of this kind will require to be made for tropical Africa, for the Pacific Islands, and for the Western Asia.

This conception of the mandate was one that was to emerge finally in Article 22 of the Covenant.

Later, Field Marshal Smuts who, according to Lloyd George, was the first person to bring the mandates idea before the Imperial War Cabinet, used this Memorandum in

16 Ibid., pp. 202-203.
17 Hall, op. cit., p. 110.
drawing up his own plan of the League including the mandates system. Before drafting his outline of the mandates system, Smuts seems to have conferred also with, and was influenced by, a group of scholars associated with the English review *The Round Table*. Active among these scholars were H.N. Brailsford, Philip Kerr, C.F. Fayle and H.A. Hobson. On 16 December 1918 the Smut's plan regarding the proposed League of Nations was published. The salient features of the Smut's plan were:

(a) the League of Nations should be treated as reversionary in respect of territories belonging to Russia, Austria-Hungary and Turkey;

(b) there should be no annexation of any of these territories to any of the victorious powers;

(c) in the future government of these colonies the rule of self-determination, or the consent of the governed to their form of government should be fairly and reasonably applied;

(d) the authority and control in respect of these colonies and peoples other than their own self-determined autonomy should be the exclusive function of, and be vested in, the League of Nations and exercised by or on behalf of it;

(e) the mandatory shall have to exercise the policy

of 'open door', that is, equal economic opportunity for all, and shall form no military forces except for internal police;

(f) if the League of Nations entrusts the administration of any territory to some other State, the appointment of such a State should be nominated or approved by the autonomous people or territory; and

(g) the degree of authority, control, or administration exercised by the mandatory state should in each case be laid down by the League in a special Act or Charter, which should reserve to it complete power of ultimate control and supervision, as well as right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatory state.

The trusteeship concept, for the first time found its practical application on an international scale in the form of mandates system which was brought into being after the First World War as part of peace settlement and as a method of disposal of colonies recovered from the vanquished Powers. Although, as we have seen above, the concept of international trust was, by no means, new when the Paris Peace Conference met in January 1919, yet the adoption of Mandates System did not have smooth sailing, for the question of the disposal of colonies was one issue on which policies, personalities and national traditions clashed. Several drafts for the

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20 Hall, op. cit., p. 114.
solution of the problem of colonies were presented, revised and rejected before a settlement of the problem was arrived at and incorporated in what later came to be known as Article 22 of the Covenant of the League of Nations.  

The underlying principle of the Mandates System as laid down in the very first para of this Article was that the well-being and development of people who were "not yet able to stand by themselves under the strenuous conditions of the modern world" should be considered a "sacred trust of civilization". On behalf of civilization this trust "should be entrusted to the advance nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility". These "advance nations" were to exercise this tutelage as Mandatories on behalf of the League. Article 22 made it clear that the character of each mandate had to differ in accordance with the stage of development of the people, the geographical situation of the territory, its economic condition and other factors. Hence Article 22 classified the territories to be placed under the mandate system into three categories:

(a) those belonging to the Turkish Empire, commonly known as "A" class mandates;

(b) those of Central Africa, commonly known as "B" class mandates; and

21 See Appendix 'A'.
(c) the territories of South-West Africa and Pacific Islands, commonly known as "C" class mandates.

The functions of the League in relation to the mandates were laid down in the final three paragraphs of Article 22.

The Mandates System, technically speaking, lasted up to the 18 April 1946 on which date the League of Nations was folded up. By that time the United Nations had already come into being and had also held its first session in January of the same year. Thus the two international organizations technically existed simultaneously for some months. There was thus no institutional gap between one international organization and the other. There was no gap also in the administration of the mandate territories, since the same mandatory powers continued their administration with unbroken continuity. With the setting up of the United Nations, however, a new system called the Trusteeship System which replaced the Mandates System was inaugurated. Two ideas which underlay the Mandates System have been carried over into the Trusteeship System:

(a) accountability for administration of a dependent area; and

(b) international supervision of the administration.

The scope of the new system is wider, its power broader and its potentialities far greater than those of the Mandates
System, as was acknowledged by Trygve Lie, the first Secretary-General of the United Nations. The Mandates System, as part of the Treaty of Peace ending the First World War, was confined to ex-enemy colonies whereas the Trusteeship System embraces potentially any and all dependent areas, including the former mandates. Secondly, the Covenant classification of mandates into "A", "B" and "C" types was not followed in the Charter. Instead, each trusteeship agreement is required to be drawn up by the states directly concerned, and approved by the General Assembly or Security Council, depending upon whether the area is strategic or non-strategic. This is a much more flexible arrangement than that of the League, since each agreement may vary according to the territory concerned without the rigidifying effect of prior classification. Thirdly, for all the territories which are brought within the Trusteeship System, self-government or independence, depending on the particular circumstances of each territory, is specifically and explicitly laid down in the Charter as an objective to be attained. On the other hand, the Covenant had explicitly recognized the provisional independence in respect of "A" mandates only, and the possibility that other mandate territories might also become independent sometime later might at the most be inferred from, but was nowhere explicitly mentioned in, Article 22. Fourthly, under chapter

XII of the Charter, the devices for international supervision include, in addition to reports by the administering authority as was required under the League, the acceptance of petitions by the Trusteeship Council, and provision for periodic visits to the trust territories at times agreed upon with the administering authorities. Both the latter two devices were, no doubt, considered by the Permanent Mandates Commission, but were never given any real application, at least as a regular method of supervision. In more general terms, chapters XII and XIII of the Charter are much more specific in laying down the lines of international control of dependent areas than were the Covenant's provisions.

In sum, then, it can be said that if the rights, particularly political rights, of the dependent peoples within the system, and the mechanism of international guarantee of those rights are taken as criteria, the Trusteeship System as formulated in the Charter represents a decided advance over the Mandates System. Yet the Charter itself is nothing more than a piece of paper - and if that advance is to mean anything more than a potentiality, the provisions of the Charter must be carried out in practice. The question of South West Africa may be taken as a test case to determine how far those provisions were applied. All the colonies which were recovered from the vanquished powers at the end of World War I have already seen the dawn of independence after passing through a period of trusteeship. Barring a few, practically all the
other colonies too to which chapter XI of the Charter applies have joined the comity of nations as independent States. South West Africa is the only mandate territory which has not become a trust territory so far in spite of United Nations' deep involvement with the problem right from its very first session. The Union Government is unwavering in its opposition to South West Africa being made a trust territory. Hence the problem of South West Africa as it stands in relation to the United Nations' persistent efforts to convert it into a trust territory and equally persistent efforts on the part of the Union Government to resist such an attempt would present an interesting study.