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Chairman: Mr. MAVROMMATIS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE
COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 4) (continued)

Report of Denmark (CCPR/C/1/Add.4, Add.19)

1. At the invitation of the Chairman, Mr. Lehmann (Denmark) took a place at the Committee table.

2. Mr. LEHMANN (Denmark), introducing the reports submitted by his Government under article 40 of the Covenant (CCPR/C/1/Add.4 and Add.19), said that the Danish Government fully shared the desire of the Committee to establish a dialogue with States parties with respect to the implementation of the Covenant. It had received the set of general guidelines relating to the form and content of reports to be submitted, and in December 1977 had provided additional information to the Committee. The initial report (CCPR/C/1/Add.4) related only to part I of the guidelines and concerned the general framework in which the rights covered by the Covenant were implemented and protected in Denmark. The limited scope of the initial report was due to the fact that, at the time of its preparation, there had been no guidelines on how the Committee wished States parties to present their reports under article 40. Unfortunately, it had not been possible in the short time available since the receipt of the guidelines to prepare all the additional information required. In the additional report (CCPR/C/1/Add.19), the Committee would find a detailed description of the implementation in Denmark of articles 1-7 and articles 17-22 of the Covenant.

3. Before ratifying the Covenants, his Government had made an in-depth study of each individual article in the light of similar provisions in Danish law. In some instances, it had proved necessary to introduce new legislation in order to comply with the provisions of the Covenant, and reservations had been entered in cases where discrepancies had been identified between the Covenant and the existing legal situation in Denmark. With regard to the other provisions of the Covenant, it had been found that domestic law was in harmony with the Covenant, a situation reflected by the fact that in 1953 Denmark had been able to ratify, without reservations, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which contained many provisions similar to those in the Covenant.

4. Denmark had accepted the international machinery established for the protection of human rights, both under the European Convention and the Covenant, thus enabling any person under Danish jurisdiction claiming to be a victim of a violation by Denmark of any of the rights under those instruments to institute proceedings at the international level after exhausting domestic remedies. His Government hoped to cover the remaining articles in its next report.

5. On the basis of its interpretation of various concepts in the Covenant, his Government believed that Denmark fulfilled the requirements set out in that instrument. However, there was the question whether its own interpretation was the same as the one which the Committee was establishing on a global basis. Should the Committee question any aspect of Denmark's interpretation, his Government would have to study its position carefully in order to ascertain whether changes were required in its domestic practice.

6. Mr. GRAEFRATH said he greatly appreciated the additional information provided by the Danish Government in document CCPR/C/1/Add.19, particularly as the first report (CCPR/C/1/Add.4) related only to the general question of the incorporation of the provisions of the Covenant into Denmark's domestic law. He agreed that it was for the State concerned to decide how such incorporation should be effected and implementation ensured.

7. He had noted with interest the information concerning Denmark's legislation against incitement to discrimination mentioned on page 4 of document CCPR/C/1/Add.4. However, he wondered whether the scope of that legislation really covered article 20, paragraph 2, of the Covenant. The prohibition of racist organizations also came under that provision of the Covenant, but he failed to see any reference to such organizations in the law mentioned in the report; perhaps such organizations were prohibited under section 78 (2) of the Danish Constitutional Act, which was reproduced on page 21 of document CCPR/C/1/Add.19. It was also to be hoped that war propaganda would one day be prohibited, in accordance with article 20, paragraph 1, of the Covenant; other forms of incitement mentioned on page 15 of document CCPR/C/1/Add.19 were punishable under the Danish criminal code, and it should be possible to make war propaganda punishable as well.

8. He would welcome additional information on the measures taken to ensure equality between men and women in the enjoyment of human rights, since very few details on that subject had been given in the report. He would also like further information on the practical results of the activities of the Council on Equality (page 5 of document CCPR/C/1/Add.19).

9. With regard to the right to life recognized under article 6 of the Covenant, he noted that a society could sentence thousands of people to death simply by doing nothing about infant mortality, maternal mortality or drug abuse. He was aware that Denmark had done a great deal in that field and felt it would be useful to stress that aspect of the right to life by providing additional information on the subject.

10. Mr. HANGA noted that, in its report, the Danish Government stated that, when considering ratification of the Covenant on Civil and Political Rights, it had been found that principles and rules similar to the provisions of the Covenant were to a large extent already in force in Denmark by virtue of the Constitution, of express statutory provisions, and of general principles of Danish law. The Government had gone on to state that where such had not been the case, special legislation had been adopted. In that connexion, he drew attention to the Acts which had been adopted by Denmark in three areas with a view to ratification of the International Covenant on Civil and Political Rights and which were mentioned on page 4 of document CCPR/C/1/Add.4. He would like to know, therefore, whether the discrepancies found between Danish legislation and the provisions of the Covenant had related only to those three fields or whether there had been others.

11. With regard to the statement that where a new legal provision was clearly at variance with a provision of the Covenant the rule of presumption was applied, namely, that the courts should presume that it had not been the intention of Parliament to pass legislation contrary to Denmark's international obligations, he said that he would welcome clarification of the nature of that rule. In that connexion, he pointed out that there was an absolute presumption which could not be rebutted and a presumption which could be overcome by evidence.

12. He would appreciate a short description of Denmark's matrimonial system and wondered whether that system ensured equality of the rights and responsibilities of the spouses as to marriage, in accordance with article 23 of the Covenant.

13. Referring to the information relating to article 21 on page 19 of document CCPR/C/1/Add.19, he asked whether the words "public peace" mentioned in section 79 of the Danish Constitutional Act had the same meaning as "public order" in article 21 of the Covenant.

14. Lastly, with regard to page 22 of the same document, he asked whether military personnel were permitted under Danish law to participate in the political life of the country as members of recognized political parties.

15. Mr. PRADO VALLEJO said that he was almost completely satisfied with the report submitted by the Danish Government. However, he was somewhat concerned by the statement made in the first paragraph on page 2 of document CCPR/C.1/Add.4. Moreover, in the fourth paragraph on the same page, the Government stated that principles and rules similar to the provisions of the Covenant were to a large extent already in force in Denmark, which meant that some provisions of the Covenant were not in force in that country.

16. Another source of concern was the statement in the third paragraph on page 3 of the same document that the law-enforcing authorities when in doubt about the interpretation of a legal provision should prefer the interpretation that would best comply with existing treaty publications. In his opinion, the use of the word "prefer" meant that there was no obligation to follow the rule in question.

17. Lastly, he would appreciate additional information on the statement in the second paragraph on page 2 of the same document that a treaty might also be adopted or incorporated into Danish law by statute or administrative regulation and that, in the latter case, the text of a treaty was directly applicable in Danish law, but only to the extent specified in the domestic legal instrument concerned.

18. Sir Vincent EVANS drew attention to the reference on page 5 of document CCPR/C/1/Add.19 to the establishment of a Council on Equality with a view to promoting equal status for men and women in all sectors of life - an example which other States might wish to follow. If the terms of reference of the Council were compared with the provisions of article 3 of the Covenant, it would be seen that article 3 was more limited, since the obligation under the Covenant was not to promote equality for men and women in all sectors of life but to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. In that connexion, he noted that the obligation under article 3 of the Covenant on Civil and Political Rights was more immediate than that under the corresponding article of the International Covenant on Economic, Social and Cultural Rights.

19. It was his understanding from the comment of the Danish Government in the second paragraph on page 4 of its additional report (CCPR/C/1/Add.19) on article 2, paragraph 1, of the Covenant on Civil and Political Rights that Danish law already ensured the equal right of men and women to the enjoyment of all the civil and political rights set forth in the Covenant. He would welcome confirmation by the Danish representative that the only function of the Council was to promote equal status for men and women in areas that went beyond the equality of civil and political rights as set forth in the Covenant.

20. He noted that a number of rules governing protection against unlawful attacks on a person's honour and reputation were listed on page 11 of the report (CCPR/C/1/Add.19). Those provisions seemed to relate mainly to attacks by one person against another. However, the Covenant was concerned primarily with the protection of individuals against acts by State authorities, and he saw no reference on the page in question to the protection against unlawful attacks on an individual's honour or reputation by a State authority.

21. Furthermore, he noted that paragraph 69 of part VII of the Danish Constitutional Act, quoted on page 12 of the same document did not seem to be very consistent with the freedom of religion.

22. He also asked whether he was correct in his impression that section 77 of the Danish Constitutional Act, reproduced on page 14 of the same document, was a constitutional provision that was not subject to amendment. Referring to the information contained in subparagraph (c) on the same page, he said he would welcome clarification of the situation with regard to communications between prisoners and counsel.

23. With regard to paragraph 4 of section 78 of the Danish Constitutional Act, reproduced on page 21 of the report, he asked whether that section applied only to the dissolution of the associations referred to in paragraph 2 of the same section.

24. Mr. KOULISHEV, referring to the report in document CCPR/C/1/Add.4, noted that the Danish Government had made a satisfactory study of the problems which the Committee had brought to the attention of States parties relating to the incorporation of the provisions of the Covenant into domestic legislation. Most States - including Denmark - did not provide for that sort of contingency in their Constitution. The Covenant did not prescribe a particular method but left the decision up to individual States; it was therefore interesting to note that the method of incorporation used in his country was similar to that of Denmark.

25. Referring to the fourth paragraph on page 3 of that report, he said that he would welcome further information from the Danish representative on the manner in which the rule of presumption operated in Denmark with regard to the application of a treaty provision clearly at variance with domestic legislation.

26. Mr. TOMUSCHAT said that, in the first part of its report, the Danish Government had made an important contribution to the general theory of the relationship between international law and domestic law. Specifically, it was

to be commended for its efforts to explain the impact of the Covenant on Danish law. Some rather intricate difficulties might, of course, arise in the case of countries which failed to incorporate the provisions of international instruments into their domestic law, since under article 2, paragraph 3, of the Covenant States parties undertook to ensure that individuals would be able to have the rights recognized in the Covenant guaranteed by the domestic judicial, administrative and legislative authorities. He was, however, satisfied that, if such difficulties did arise in Denmark, the Danish judicial, administrative and legal authorities would rely primarily on the relevant provisions of the Covenant.

27. Referring to the comments on article 5 of the Covenant made in the second part of the Danish report (CCPR/C/1/Add.19, pages 6 to 8), he said that he had taken note with great interest of the fact that no death sentence had been carried out in Denmark since 1946. He nevertheless wondered whether offences against the Constitution and the supreme authorities of the State which took the form of verbal attacks were punishable by death, in accordance with section 111 of the Danish Constitution.

28. On page 8 of the second part of the report in the comments relating to article 7 of the Covenant concerning the prohibition of torture, he had been interested to learn that a Danish medical group was carrying out research work to help Amnesty International in its efforts to put an end to torture. Such research was of the greatest importance, and he hoped that it would continue to be carried out in view of the practices being followed in a number of countries.

29. With regard to the comments on article 19 of the Covenant made on page 14, paragraph 1 (b), of the report, he requested the Danish representative to explain the distinction which had been made between the publication of opinions and the exchange of private communications.

30. His last question related to the reference made in connexion with article 19 of the Covenant to the Danish Radio and Television Act of 1973 (page 19 of the second part of the report). In particular, he wished to know how the Danish Government ensured that the radio and television, which were Government institutions, did not become means of indoctrination. In other words, he would appreciate further information on the measures taken to ensure that all segments of the population were entitled to express their opinions on radio and television.

31. Mr. TARNOPOLSKY commended the Danish Government on being one of the first States to ratify the Covenant and the Optional Protocol, and on the efforts it had made to co-operate with the Committee and comply with the guidelines it had adopted for the submission of reports.

32. In the comments on article 2 of the Covenant appearing on page 4 of the second part of the Danish report, it had been made clear that, under Danish law, it was possible for the courts to challenge administrative or executive acts. He had, however, been unable to find an answer in the Danish report to the question whether the courts could declare legislative acts to be unconstitutional. He would appreciate a reply to that question, which was particularly important since, in Denmark, international law was not automatically binding unless it was implemented in domestic law, as stated in the first part of the report.

33. In connexion with the comments on article 7 of the Covenant (pages 8 and 9 of the second part of the report), he wondered whether corporal punishment was still permitted in Denmark and whether Danish law provided for the solitary confinement of prisoners and, if so, for how long.
34. On page 9 of the second part of the report in the comments relating to article 17 of the Covenant, reference had been made to section 72 of the Danish Constitutional Act, which provided that searches could not take place "except under a judicial order, unless particular exception was warranted by statute". He requested the representative of Denmark to provide further information on such exceptions.
35. On pages 13 and 14 of the second part of the report, in the comments relating to article 18 of the Covenant, which guaranteed freedom of thought, conscience and religion, it was stated that, under section 5 of the Elementary School Act of 1975, children could, in some cases, be excused from receiving instruction in religious knowledge. He wondered whether children who had no particular religious beliefs could, in fact, receive some other form of instruction to replace religious instruction.
36. In paragraph 2 (page 15 of the second part of the report) of the comments relating to article 19 of the Covenant on freedom of expression, it was stated that, under section 77 of the Danish Constitutional Act, provisions could be adopted which imposed "subsequent liability for the publication of certain sayings by virtue of their substance". In that connexion, he requested the representative of Denmark to provide further details on possible restrictions of the freedom of expression.
37. Referring to section 140 of the Danish Criminal Code (pages 15 and 16 of the second part of the report), he requested the representative of Denmark to provide examples of cases which had occurred in Denmark and which might illustrate the relationship between the principle of respect for the rights and freedoms of others and the freedom of religion. He would also appreciate it if the representative of Denmark could inform the Committee whether Danish law provided for restrictions on freedom of assembly and freedom of association other than those referred to on pages 19 to 22 of the second part of the report in connexion with the comments on articles 21 and 22 of the Covenant.
38. Referring to the comments on article 26 of the Covenant made in paragraph 3 (ii) of the first part of the Danish report, he said he was of the opinion that article 26 prohibited discrimination of any kind. States parties to the Covenant were therefore required to prohibit discrimination by individuals against other individuals seeking access to employment and accommodation. The Danish Act of 1971 on Prohibition of Discrimination on account of Race et al. did not seem to go quite that far, and he wondered whether the Danish Government intended to adopt legal provisions for that purpose in future.
39. Mr. OPSAHL said that the Danish Government was to be complimented for its willingness to comply with the guidelines for the submission of reports adopted by the Committee.

40. The views of the Danish Government concerning the Covenant's impact on domestic Danish law had been very clearly described in section 2 of the first part of the report. It was, of course, true that practical difficulties of interpretation might arise in countries which did not consider it necessary to make the provisions of the Covenant part of their domestic law. In the case of Denmark, for example, the rule of interpretation which was applied when international treaty obligations conflicted with domestic law might have consequences for the exercise of discretionary powers by administrative authorities, as noted on pages 3 and 4 of the first part of the report. The Danish Government apparently considered that the administrative authorities should exercise discretionary powers in such a way that administrative acts conformed to validly contracted international obligations, and that such a legal obligation was enforceable by judicial review under article 63 of the Danish Constitution. He nevertheless wondered whether that view was fully realistic since administrative authorities were often unaware of the Covenant and therefore needed to be informed of its provisions and scope.

41. He had noted with satisfaction that the comments on article 1 of the Covenant (pages 2 and 3 of the second part of the report) referred to the achievement of the right to self-determination by the people of Greenland and to the establishment of a Commission whose task included the submission of recommendations for a system of local autonomy in Greenland. He requested the representative of Denmark to provide up-to-date information on the work of that Commission.

42. Like some other members of the Committee, he had a question concerning the restriction in Denmark of the freedom of expression recognized in article 19 of the Covenant. In that connexion, he drew attention to the distinction that was frequently made between prior restraint and subsequent responsibility for the exercise of the right of freedom of speech. He noted that, although the Danish Constitution prohibited the introduction of censorship, it provided less protection against subsequent responsibility. It had occurred to him that the prohibition of the introduction of censorship in Denmark was perhaps more than article 19 of the Covenant required, while the Danish attitude towards subsequent responsibility could perhaps be examined more carefully in the light of article 19 of the Covenant. He would appreciate an explanation of whether the Danish Government's study of the provisions of the Covenant had covered that problem. In particular, he wondered whether it would be consistent with the provisions of article 19 for the Danish Government to punish the distribution of pacifist material to soldiers in accordance with the provisions of section 136 (1) of the Danish Criminal Code (page 15 of the second part of the report).

43. Mr. MOVCHAN, referring to the first part of the Danish report contained in document CCPR/C/1/Add.4, said that he fully shared the views expressed by Mr. Prado Vallejo. He was not, however, entirely satisfied with the explanations given in the first part of the report, and would be grateful to the representative of Denmark for further information on his country's view that domestic legislation took precedence when it conflicted with an international obligation. He was of the opinion that the only correct interpretation of the relationship between domestic law and international law was that no reference to domestic law could be made as an

excuse for failure to fulfil an international obligation. In that connexion, he referred to the Danish reservation to article 20 of the Covenant and asked whether the Danish Government intended to withdraw its reservation and bring its domestic legislation into line with that provision of the Covenant, or whether it would continue to hold the view that article 20 of the Covenant limited the right to freedom of opinion.

44. With regard to the comments on article 18 of the Covenant made on pages 12 to 14 of the second part of the report, he said he had had the impression that Danish legislation was restricted to matters relating to freedom of religion. In his opinion, however, article 18 was broader in scope than Danish law in that it related to freedom of thought and conscience as well as to freedom of religion. He would appreciate further information on any legal provisions which Denmark intended to adopt in that connexion in future.

45. In the comments relating to article 21 of the Covenant (page 20 of the second part of the report), it was stated that, according to section 80 of the Danish Constitutional Act relating to freedom of assembly, "the armed forces may not take action, unless attacked, until after the crowd has three times been called upon to disperse ...". He wondered who was responsible for ensuring that crowds had, in fact, been called upon three times to disperse.

46. Mr. GANJI commended the Danish Government for the report it had submitted and for its willingness to co-operate with the Committee in following the guidelines that had been adopted.

47. Referring to the first part of the Danish report, he said that he shared the view expressed by some members of the Committee that the provisions of an international treaty did not necessarily have to be incorporated into domestic law. As rightly pointed out in the first part of the Danish report, the incorporation of treaty provisions into domestic law became necessary only when such provisions were not in keeping with a pre-existing legal situation.

48. In that connexion, he noted that, in considering the reports submitted by Denmark and other countries, the Committee had been dealing with prevailing legal situations and trying to determine whether those situations were in keeping with the provisions of the Covenant. From that point of view, the Danish reports were very interesting because they described in rather great detail various administrative and legislative enactments and means of giving effect to them, as well as restrictions on rights and freedoms which Denmark had considered it necessary to impose for reasons of public order and safety.

49. The Committee was, however, more interested in finding out what the factual situation was in the States parties to the Covenant. States parties might actually be applying their domestic laws in ways that were fully consistent with the provisions of the Covenant, but the Committee could never be absolutely sure whether that was so unless it received reports dealing with the de facto situation in those States, not the legal situation.

50. He was therefore of the opinion that the guidelines which the Committee was requesting States parties to follow in the submission of their reports had to go further than they did at present. He thus found it rather difficult to put questions to the representative of Denmark since he was unfamiliar with the factual situation in that country.

51. Mr. LEHMANN (Denmark) expressed his Government's appreciation for the way its initial report had been received by the Committee and for the dialogue which had been established between the Committee and itself in respect of the proper implementation, in fact as well as in law, of the rights set out in the Covenant. At the present stage, he would limit his comments to some of the points raised during the discussion.

52. There were two different techniques which could be used by a country in fulfilling in good faith the treaties to which it had acceded, and the assumption must be made that no State party was interested in violating or attempting to violate a convention or provisions which it had, after careful consideration, decided to ratify. The technique used in Denmark, as well as in a number of other countries, was admittedly rather complicated. The first step consisted in comparing the provisions of the treaty in question with domestic legislation, and the outcome of that exercise could be a decision simply to incorporate the entire treaty into Danish law. In the present case, however, the rights set out in the Covenant had been found to correspond so closely with the relevant principles of Danish law that it had not been considered necessary to follow that course. In the view of his Government, there were no discrepancies between the Covenant and Danish law other than those described in the initial report. In some cases new legislation had been introduced in order to remove such discrepancies, whereas in others the Government had deemed it necessary, for the time being, to enter a reservation to the relevant provision of the Covenant. Nevertheless, the question of other possible discrepancies would be given due consideration in the light of the comments made by Committee members.

53. As stated in the first part of its report (CCPR/C/1/Add.1), Denmark had attempted in good faith to fulfil its obligations under the Covenant by applying the rule of interpretation and the rule of presumption. Apart from the very special situation which would be brought about by intent to violate the Covenant, that technique did not produce different results from those used in many other countries. Furthermore, the very method of ascertaining harmony had the effect of obliging the administration and the courts to recognize that relevant domestic legislation must be applied so as to ensure the correct implementation of the treaty concerned, even if different possibilities of interpretation or of exercising discretionary powers had formerly existed. It was possible to invoke before a court the provisions of the treaty or convention that were relevant to the case, as had in fact already been done in Denmark on occasions where provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been relevant.

54. Turning to the comments made in respect of article 20, paragraph 2, of the Covenant, he said that article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination contained a reference to the rights set forth in article 5 of the same Convention, one of which was the right to freedom of opinion and expression. Consequently, by cross-reference from article 20, paragraph 2 of the Covenant to that Convention, the right to freedom

of expression was secured. As to whether the legislation introduced in Denmark with a view to fulfilling its obligations under the Convention was applicable to individual behaviour, he would certainly interpret Act No. 289, to which reference was made in the report (CCPR/C/1/Add.4, page 4), as applying also to the behaviour of private citizens in respect of matters such as renting accommodation. However, that issue might perhaps be discussed further at another meeting of the Committee.

55. It was true that the reference to the Council established in 1975 to promote equal status for men and women (CCPR/C/1/Add.19, pages 5 and 6) related to some extent to the International Covenant on Economic, Social and Cultural Rights. However, under the guidelines on reporting drawn up by the Committee, States parties were invited to provide relevant information on progress made in the enjoyment of rights even if such information exceeded the scope of the Covenant on Civil and Political Rights proper. The Danish Government would be happy to report in more detail at a later stage on the draft legislation introduced in Parliament to promote completely equal treatment of men and women on the labour market. Similarly, it would provide the Committee with further information on the activities of the Commission set up to prepare for local autonomy in Greenland (CCPR/C/1/Add.19, page 3), which had almost completed its work.

56. Detailed replies to the questions asked in respect of articles 18, 19, 21 and 22 of the Covenant would be given in Denmark's next report to the Committee. In that connexion, he would welcome some indication of when the Committee would wish to consider a further report by his Government.

57. The CHAIRMAN said that the Committee's future time-table would depend very much on its workload. However, the Danish Government would certainly be notified in good time of the date on which the Committee would wish to continue its examination of the situation in that country.

58. He thanked the Danish Government and its representative for what had been described by members as a very good report, for the additional information provided on the basis of the Committee's guidelines, for the introductory comments made and the answers given, and for the undertaking to provide further information in response to the questions put by members.

59. Mr. Lehmann (Denmark) withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

60. The CHAIRMAN informed the Committee that written notification had been received from the Chilean Government to the effect that a new initial report was being prepared on the basis of the guidelines laid down by the Committee. Consequently, the Chilean Government wished consideration of its report to be postponed to a later session.

61. Mr. ESPERSEN requested that the Committee's decision on that issue should be deferred to a later meeting in view of what might perhaps be described as special circumstances.

62. The CHAIRMAN said that if he heard no objection he would take it that the Committee could comply with that request.

63. It was so agreed.