

**INTERNATIONAL  
CONVENTION  
ON THE ELIMINATION  
OF ALL FORMS OF  
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Nenty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION

Sixth periodic reports of States parties due in 1983

Addendum

DENMARK 1/

[4 August 1983]

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APPENDIX I - Home Rule in Greenland, article by I. Foighel

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1/ For previous reports submitted by the Government of Denmark and the summary records of the meetings of the Committee at which the reports were considered, see:

1. Initial report - CERD/C/R.50/Add.3 (CERD/C/SR.159);
2. Second periodic report - CERD/C/R.77/Add.2 (CERD/C/SR.236);
3. Third periodic report - CERD/C/R.98/Add.3 (CERD/C/SR.334);
4. Fourth periodic report - CERD/C/48/Add.2 (CERD/C/SR.442-443);
5. Fifth periodic report - CERD/C/75/Add.5 (CERD/C/SR.540).

I. Introduction and General Part

1. This report is submitted in pursuance of article 9, paragraph 1 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination which entered into force with respect to Denmark on 8 January 1972.

2. The report is organized in conformity with the revised guidelines set out in document CERD/C/70 and Add.1.

3. The report is concentrated on developments since the submission of the fifth periodic report in 1981, ref. document CERD/C/75/Add.5.

4. A brief description of:

(a) Danish policy in eliminating racial discrimination in all its forms;

(b) the general legal framework in which racial discrimination, as defined in article 1, paragraph 1, of the Convention, is prohibited and eliminated in Denmark, and

(c) the measures taken to promote and protect the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life,

is given in the five previous periodic reports, especially the first (CERD/C/R.50/Add.3) and the second (CERD/C/R.77/Add.2) reports, to which reference is made.

5. The impact of the Convention on domestic law is dealt with in particular in section III, p. 5ff of the fourth periodic report (CERD/C/48/Add.2).

6. As regards the demographic composition of the Danish population of relevance to the implementation of the Convention, it should be noted that persons are not registered according to ethnic origin, as was explained during the examination of the fifth periodic report, Official Records: Thirty-sixth Session, Supplement No. 18 (A/36/18) paragraph 467.

7. As of 1 January 1982 the number of immigrants in Denmark was 101,914, equal to about 2 per cent of the total population. 49,349 immigrants came from the other Nordic countries or EC Member States, the United States and Canada. 52,565 came from other countries, of which 16,705 from Turkey, 8,038 from Pakistan and 7,402 from Yugoslavia.

8. Since the preparation of the fifth Danish report, immigrants who have been resident in Denmark for a three-year period immediately preceding local government elections have been accorded the right to vote in such elections, cf. the comments on Part II, article 5, below. No other legislation relative to the Convention has been adopted since the submission of the fifth report.

II. Information relating to each of the Articles in Part I (Articles 2-7) of the Convention

Article 2

9. Further to the information on the Greenland Home Rule Act submitted in the fifth report, an article "Home Rule in Greenland" by Professor Isi Foighel is appended to this report, (Appendix I). The Home Rule Act is reproduced in this article, (Appendix II).

10. With respect to aliens resident in Denmark, the main lines of Danish immigration policy are as follows:

11. Against the background of the general recession and the high rate of unemployment a ban on immigration of citizens of third countries was imposed in 1973. Since then, immigration from these countries has primarily been for the purpose of family reunions.

12. Today, immigrants enjoy largely the same rights as those accorded to Danish citizens by law. Immigrants thus have the same rights as Danish citizens to protection of person and property, use of and protection under the judicial system, the fundamental freedoms guaranteed under the Constitution, education, work, housing and various social benefits and services, treatment in public hospitals, formation of marriage, etc. Immigrants (citizens of foreign countries) are not, however, entitled to vote in elections to the Folketing (parliament). But as of 1981, the right to vote in local government elections was extended to include immigrants having been permanently resident in Denmark during the last three years prior to polling day.

13. To achieve de facto equal status between immigrants and Danish citizens, society must, however, support certain groups of immigrants in the course of that process.

14. The primary aim of Danish immigration policy is in the long term to enable immigrants to hold their own in the Danish society on an equal footing with the Danes. It is sought to attain this aim through a policy of integration in which, where necessary, due account is taken of the cultural background of the immigrants.

15. Immigration is primarily regarded as the individual immigrant's own responsibility. But in the case of immigrants to whom integration may pose special problems, notably immigrants from countries with a social, economic and cultural background which differs essentially from the conditions prevailing in Denmark, it is sought to facilitate integration through the implementation of special measures, principally in the fields of education and training. Moreover, central government grants are given to local governments in districts with a particularly large number of immigrants. These grants are made in recognition of the unusually heavy expenditure which such measures entail for the local governments concerned. Furthermore, central and local governments grant support to immigrants' associations.

16. It is a main principle of immigration policy that problems encountered by immigrants shall be dealt with, at both central and local government level, by the same authorities as those catering for the rest of the population. At the government level, the elements of immigration policy are co-ordinated by a special ministerial committee.

### Article 3

17. The statutory amendments required for compliance with the provisions of the Convention have been carried out and information thereon submitted in the first report. It should be underlined that racial discrimination and practices of apartheid are illegal in Denmark.

18. A number of Danish youth organizations, collectively represented on the Joint Council of Danish Youth, have for many years been initiators of information campaigns on the apartheid regime in South Africa. The Council is in close contact with African liberation movements.

19. Furthermore, religious youth organizations, co-ordinated in the Secretariat of the Joint Ecumenical Council, have conducted intensive campaigns on South Africa - especially on the work of the South African Church Council. The Danish Government supports this work financially.

#### Article 4

20. Supplementary to information submitted in the fourth and fifth reports concerning the provisions of Danish law relating to dissolution of associations pursuing illegal objects it should be noted that the provision governing access to require dissolution of associations practicing violence or seeking to attain their objects by violence, by instigation to violence or by similar punishable influence on dissidents are laid down in the Administration of Justice Act (Consolidated Act No. 1 of 2 January 1980).

21. Section 684 provides:

"(1) Furthermore, the provisions of this Part of the Act, regardless whether imposition of punishment is simultaneously claimed, shall apply in cases where the Prosecution claims ...

(...)

(11) dissolution of an association ...".

22. Accordingly, the competence to demand dissolution of an association is vested in the Prosecution.

23. Section 742 provides:

"(1) Information about offences shall be laid with the Police.

(2) The Police shall, upon information laid or on its own accord, institute investigations where there are reasonable grounds to assume that an offence for which criminal proceedings have been instituted has been committed".

24. According to the provision, any person, regardless of his nationality, may request the Police to institute investigations with a view to dissolution of an association. The competence to take definitive decision as to whether a case shall be taken to court lies with the Prosecution.

#### Article 5

25. Since the preparation of the fifth report, a new Act - An Act to Amend the Local Government Elections Act (No. 143 of 30 March 1981) - has been passed. Pursuant to that Act non-Danish citizens were accorded the right to vote in elections to local government councils.

26. Section 1 (subsection 1) of the Act provides:

"Any person shall be entitled, subject to the exceptions set out in subsection (2) of this section, to vote in elections to the Copenhagen City Council or to the councils of primary and county local government districts if he has attained the age of 18 and is permanently resident in the local government district concerned, provided that persons who are not Danish citizens shall be entitled to vote only if they have been permanently resident in the Realm for a period of three years immediately preceding the election".

27. With regard to the new provisions of the Pensions Act relating to build-up period, citizenship and residence of aliens which are in the process of drafting, referring to the fifth report regarding article 5, it should be noted that the Ministry of Social Affairs is still making preparations for amendment of the provisions.

28. Seeing that the Bills concerned have not yet been tabled in the Folketing (parliament) detailed information cannot be given about the exact content of the provisions.

#### Article 6

29. Since the preparation of the fifth report, criminal proceedings were instituted in three cases for violation of section 266, b, of the Criminal Code, which prohibits discrimination on account of race, colour, national or ethnic origin, or belief.

1. A person was punished for having referred, via radio walkie-talkie, to another person as a "sheeny".
2. A person was punished for saying at a public meeting, about Moslems, inter alia Turks, resident in Denmark as immigrant workers: "Being unemployed they sponge on industrious and skilled Danish workers while through immigration and propagation they multiply at a terrific rate - I am not allowed to say that they multiply like rats. As a matter of fact, Moslem women give birth to one child a year from the age of 15 to the age of 45". The person concerned was furthermore convicted for having sent summaries of his statement during the meeting to two newspapers.
3. A person was punished for having called an Italian citizen "a dirty foreign worker".

30. During the period under review, the Parliamentary Ombudsman has dealt with one case of application of the Racial Discrimination Act - Act No. 289 of 9 June 1971:

31. In connection with a scheme for approval of applications for tenancies in a large block of flats in a primary local government district the town council had decided that eligibility for tenancy should be determined not only by the financial status of applicants but also by their citizenship. It had been ascertained that 26 per cent of the tenants in the block concerned were foreign citizens and that the local government authorities wanted to reduce this ratio. In the course of his investigations into the matter the Ombudsman was informed that the local authorities had rescinded from the scheme the requirement as to citizenship. Following this, the Ombudsman saw no reason to take further steps in the matter.

32. No cases concerning racial discrimination in advertisements have been brought before the Consumer Ombudsman since the preparation of the fifth report.

#### Article 7

33. In the previous reports information was given about measures taken for observance of the provisions of article 7 with regard to education and teaching, cultural activities, and information. Supplementary to this information the following comments are submitted:

Education and teaching

34. Under general statutory provisions education shall be based on the principle of tolerance towards minorities of all kinds. Consequently, problems of discrimination are dealt with frequently and intensively in the teaching of all relevant subjects. All ethnic minorities in Denmark have the same access as Danish citizens to free education, including advanced education, not only to ensure equal access for all to education, but because it is found that the presence of minority groups is an important factor in promoting tolerance in practice.

35. During the period under review no charges have been brought for violation, within the educational sector, of the statutory provisions relating to racial discrimination.

36. With reference to the questions raised in the course of the examination of the fifth report regarding decentralization of decision-making processes under the Danish school education system (cf. paragraphs 466 and 471 of Official Records, Thirty-sixth Session, Supplement No. 18 (A/36/18)) the following comments are submitted:

37. There is, in Denmark, a delicate balance between central decisions (e.g. legislation on elimination of racial discrimination and on objectives of teaching in schools) and local decisions and local responsibility for observance of decisions (e.g. local decisions concerning curriculae and supervision by school commissions and school boards to ensure that these decisions are respected in teaching and teaching media). One of the chief motivations for decentralization is that local supervision is presumed to be more effective than central supervision.

38. About 8 per cent of the children in the age group for which school education is compulsory attend private schools, which enjoy public financial support. These schools seek, within the framework of the legislation, to attain various objects of educational, ideological and religious character, or to employ different teaching methods from the State schools.

39. Private schools are subject to government inspection, and there is nothing to indicate that private schools fail to live up to the requirements of public school education. On the contrary, the requirements are said to be stricter. Some private schools are particularly multinational, which poses an inherent risk of confrontations. For that reason it is one of their explicit objectives to counteract tendencies to discrimination.

Culture

40. Within the purview of the Ministry for Cultural Affairs racial discrimination seems to be non-existent. Consequently, no comprehensive official programmes on that subject have been launched.

41. The Danish Refugee Council and a number of its member organizations are engaged in local and general projects for integration of refugees. Similar activities have been instituted with respect to immigrant workers (and their children). This work is supported financially at both central and local government level. Furthermore, reference is made to the account on Danish immigration policy given regarding Article 2.

42. The government has on several occasions granted financial support of cultural activities with respect to immigrants. Several Danish organizations, not least youth organizations, co-operate closely with corresponding organizations in the Faroe Islands and Greenland. The Danish Joint Council of Youth has held negotiations with the Greenland Home Rule authorities with a view to building up a co-operation among the Greenland youth organizations on the Danish pattern.

Information

43. Several organizations and institutions carry through activities on a country-wide basis. They also publish information material, partially with public support, in an effort to combat racial discrimination and promote tolerance, nationally as well as internationally.

# Home Rule in Greenland \*

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Isi Foighel, 1980. Home Rule in Greenland. *Meddr Grønland, Man & Society 1*, 18 pp, Copenhagen 1980-12-01.

By Danish Act of 29 November, 1978, Home Rule was established in Greenland within the Unity of the Danish Realm. The Act was prepared by a Danish-Greenlandic Commission.

The Act on Home Rule is discussed with special reference to the historical and political background.

By the establishing of Home Rule, powers which hitherto had been vested in the Danish Government and Parliament were transferred to the Greenlandic authorities. The scope of these powers and their legal characteristics are outlined.

Home Rule makes no changes in the international competence or in the relationship between Greenland and the international or interregional organizations. Greenland's membership of the EEC creates some special problems.

The question of ownership of the natural resources was of great importance in the debate in the Home Rule Commission. The Act contains a solution which seeks to give the Danish Government as well as the Greenlanders equal rights in the decision-making procedure, in the administration, and in the sharing of the revenue.

Furthermore, the financing of the Home Rule system, the language problem, the organizing of fishing and trade are being dealt with.

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## I Background

With a total of 2.175.600 square kilometres Greenland constitutes the largest island of the world. By far the greater part of the island is permanently covered by the ice-cap, the ice-free areas covering only 341.700 square kilometres. This area is inhabited by some 45.000 persons of which hardly 40.000 are born in Greenland, ethnically being eskimoes. By far the greater part of the working population (some 13.500 persons) make their livelihood from hunting, fishing, and sheep-breeding, whereas the rest today is occupied in the field of administration, transport, building, construction etc.

Since the famous voyage of the Danish missionary *Hans Egede* to Greenland in 1721, Greenland has been considered a Danish colony. The first major general regulation concerning Greenland, "Instructions regarding Trade and Whalehunters in Greenland" was issued on April 19, 1782. In this act the Danish King laid down its general policy regarding his northern colony. The instructions provide that the administration should be made in the best interest of the Greenlanders. Trading interests should also be promoted as much as possible, but should have second priority.

The administration of Greenland has had its seat in

Copenhagen, but in the second half of the nineteenth century local organs of government were established: Elected Advisory Councils – subsequently replaced by Municipal Councils – and two Provincial Councils for Northern and Southern Greenland respectively which were merged into one Council in 1960.

The status of colony could hardly survive the second world war, during which above all the association with the U.S.A. has meant a stronger contact with the surrounding world which, in conjunction with the import of many novel and exciting goods and an extended economy, created a need for – as well as an expectation of – a new epoch.

When the new Danish Constitution was adopted in 1953, Greenland became an integral part of the Danish Realm with equal rights. In this connection it is interesting to note, that Greenland becoming integrated in the Danish Realm was approved by the General Assembly of the United Nations in 1954 upon representatives of the Greenland population having appeared and expressed their agreement with the amended constitution. (Conf. Resolution 849 (IX), United Nations Yearbook, 1954, pp. 319-323).

At the same time a tremendous programme of de-

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\*Text published in English

Fig. 1



The members of the Home Rule Commission and the staff at their last meeting in Julianehåb – Qaqortoq – Greenland June 14th, 1978

*From left:* Steen Folke, Bernhard Tastesen, Jacob Janussen, Ado Lunge, Peter Mathiasen, Jonathan Motzfeldt, Søren B. Jørgensen, Sven Haugaard, Gunnar Martens, Isi Foighel, Jakob Karup Pedersen, Erik Hesselbjerg, Lars Chemnitz, Otto Steenholdt, Lars Emil Johansen, Severin Johansen, Niels Carlo Heilmann, Peter Kreuzmann, Ole Olesen.

*Not present:* Helge Dohrmann, Ivan Hansen, Erik Ninn Hansen, Konrad Steenholdt, Frederik Williams, Jørgen Gersing, Eva Barnekow.

velopment was initiated in all areas in order to fulfil the goals of the new order set by Denmark as well as by Greenland: to create the greatest possible equality between Danes and Greenlanders. The fact that this task involved enormous problems may be seen from the number of commissions and committees which, since then, have been established in order to adjust the goals and the methods.

In the fall of 1972 the Greenland Provincial Council informed the Minister for Greenland that in the Council's opinion the time had come for a commission to study in detail the issue of giving the Provincial Council an influence upon, and a joint responsibility for, the development of Greenland. The study should be carried on without prejudice. The result was that the then Minister for Greenland, *Knud Hertling*, decided to establish a home rule committee consisting exclusively of Greenlanders. Having worked for two years the home rule committee submitted a preliminary report and suggestions for negotiations on February 18, 1975. It was proposed that the formal basis for a home rule

system within the framework of the community of the Realm should be established as soon as possible so that the principles of home rule could be decided upon, and the necessary statutory authority provided for a gradual increase of the responsibility and influence of the Provincial Council in various fields. The fields in question had previously been administered by the State Government. A wish was expressed of a dialogue between Danish and Greenland politicians.

Against this background the Minister for Greenland, *Jørgen Peder Hansen*, on October 9, 1975, established the Commission on Home Rule in Greenland. The Commission concluded its work in June 1978 by submitting a report containing proposals for a Home Rule Act with adjacent consequential statutory provisions. All the statutes proposed were adopted unamended by the Danish Parliament on November 17, 1978 (Conf. Act no. 577, November 29, 1978, *Lovtidende*, A, 1978, p. 1879). On January 17, 1979, the population of Greenland approved by referendum the entering into force of the Home Rule Act in Greenland on May 1,

1979. The result was 70,1% affirmative votes and 25,8% negative votes out of a total voting percentage of 63,3 of the entire electorate.

## II The Commission on Home Rule

The Commission on Home Rule comprised 5 members elected by the Greenland Provincial Council, the 2 Greenland members of Parliament, 7 members elected by Parliament and a Chairman appointed by the Minister for Greenland. Furthermore, the Undersecretaries of State of the Prime Minister's office and the Ministry for Greenland as well as the Executive Secretary of the Greenland Provincial Council were assigned to the commission. The federation of Greenland municipalities were represented at the meetings of the commission by permanent observers.

The work of the Commission on Home Rule was influenced by three major elements:

(1) Due to its political composition the commission had to find a *political* solution, which – at a time which was critical in the evolution of the relations between Denmark and Greenland – could prevent any breaking off of these relations and which, on the contrary, could contribute to the creation of a new basis for strengthening the ties, which hold the two parts of the Realm together.

The fact that it was justified to characterize the relation between Denmark and Greenland as a critical one in the early seventies stems from a number of circumstances:

First of all one may point to the fact that the evolution which had commenced some 25 years earlier involving a mutual wish of equality in terms of social status, education, housing and other matters between Greenland and Denmark had changed the Greenland society in major ways and in comparatively few years. The efficiency and the speed with which the changes took place had created in many people in Greenland some uncertainty and insecurity in relation to the many novelties, which created dissatisfaction and strains in the relation between Greenland and Denmark. However, even though it is difficult to argue that efficiency goes too far and although, by definition, one cannot proceed too speedily in creating decent dwellings, fighting tuberculosis, modernizing a fleet of fishing vessels, etc., the enormous Danish investments and the great number of experts and workmen dispatched to Greenland, none the less meant that the influence of the government upon everyday life in Greenland in all fields was felt more strongly, and consequently the Greenland influence was seen as correspondingly constantly decreasing. In other words, Greenland felt that equality was hardly a reality. "One was a tenant in one's own country", as the saying went.

Secondly, the referendum in 1972 regarding the

European Community played a role. The result of the referendum in Greenland was that only 28,4% wished to join the EC. The votes cast in Greenland were – in fact fully in accordance with the constitutional status of Greenland – combined with the votes in the rest of Denmark, so that Greenland became included in the Danish EC-membership. For the first time the Danish Government engaged in a Greenland policy, which many conceived as contrary to the wishes of Greenland. This created a feeling of powerlessness.

Finally, there is no doubt that the fact that concessions for the exploitation of oil outside the coast of Greenland were given in the spring of 1975 (Hesselbjerg 1976: 14), created some disturbance although the decision had been approved by a majority of Greenland politicians. The concession likewise created expectations regarding a different future speeding up new thoughts on the relation between Denmark and Greenland.

(2) The commission was furthermore obliged to find a solution which could be implemented by Greenland politicians at a time at which even the Greenland society had become complex, but did not have the requisite number of educated Greenlanders. The commission was aware that it had to proceed cautiously in relation to that part of its work which consisted in giving rules of substance for the development of the Greenland society and in considering and suggesting a structure of public administration in Greenland, which would be appropriate in the light of the proposals of the commission. It would have amounted to a lack of consequence if the commission had submitted too rigid proposals, if it was also proposed that as of May 1, 1979, Greenland politicians should themselves be responsible for legislation and administration. In this respect the commission felt its task to be that of contributing to the drafting of blue-prints which were not binding upon the future home rule authorities but which, on the other hand, would be applicable if so desired. Such proposals, for instance regarding the Greenland school, radio and church, were therefore purposely drafted by the Greenland members of the commission, the remaining members contributing exclusively with their expert knowledge and experience stemming from their participation in legislative work for a great many years. It was not attempted to reach unanimity between Greenland and the Danish members.

(3) Finally, the work of the Commission on Home Rule was influenced by the distinct and obvious limitation, accepted by both parties, that the arrangements to be established would have to be in conformity with the Danish Constitution. Amending the Constitution was out of question. On this point it was but natural that the commission should bear in mind the arrangement established in 1948 regarding home rule for the Faroe Islands, an arrangement which was undoubtedly in conformity with the 1953 Danish Constitution (Max Sørensen 1973: 51–53).

The situation in Greenland was however, basically different from that of the Faroe Islands. In financial terms the Faroe Islands were a secure society in 1948, and the number of Faroese having a higher education and experience in public administration was far from insignificant. Furthermore, seen particularly against the historical background there are major differences between the Faroe Islands and Greenland as regards communication, climate, and other elements deciding the evolution of a society. A home rule system on the basis of the Faroe Island arrangement could hardly come to function in Greenland, but the system might, at least, serve as a legal model.

The report of the commission as well as the bills contained therein are actually nothing but recommendations to the Government and the Greenland Provincial Council. However, the fact that the results submitted by the commission were achieved through negotiation between political representatives of Greenland and Denmark will presumably have some significance in assessing the constitutional nature of the Home Rule Act. As for the Faroe Islands reference is made to Ole Perch-Nielsen (1968: 29) and Max Sørensen (1973: 52).

### III Unity of the Realm and Home Rule

The terms of reference of the commission which have been accepted by the Danish as well as the Greenland members provided that introducing home rule should be done within "the frames of the unity of the Realm". This principle is derived from article 1 of the Danish Constitution.

The assumption that national unity is to be preserved implies: -

- that upon home rule having been established Greenland remains a part of the Danish Realm,
- that sovereignty continues to be exclusively with the authorities of the realm (the Government and Parliament),
- that home rule for Greenland cannot be established through a treaty based on international law, but exclusively on the basis of constitutional law through a Danish act by means of which the Danish Parliament delegates a certain, precisely defined, part of its competence to home rule, and
- that only part of the competence of the authorities of the Realm may be delegated to home rule just as only fields which pertain exclusively to Greenland but not to the Realm as a whole or to other parts of the Realm may come under home rule.

Consequently, national unity means that certain fields, as for instance security, foreign policy, and currency policy must remain with the authorities of the Realm, just as it will not be possible to make an unlimited delegation of fields to home rule.

However, there is also implied in national unity a significant, although somewhat diffuse, assumption of a political-moral nature regarding mutual solidarity between the various parts of the Realm which, among other things, involves mutual support and a willingness to take the interests of the Realm into due account in major issues.

As was likewise the case in relation to the Faroe Islands, the principle of maintaining national unity excludes the formation of a federation.

Against this background one may describe home rule as a particularly *qualified type of self-government*. Self-government means a statutory delegation of certain powers, so that parliament and the government refrain from legislating or administering certain fields, but leaves this to local organs, as for instance municipal self-government. The characteristic feature of home rule consists in the powers which have been statutorily transferred being, in terms of their area, identical to the powers exercised by the national authorities in other parts of the Realm. As far as municipal self-government under the Constitution is concerned, the limitations upon the national authorities which the various types of self-government involve may be classified as functional ones, whereas the limitations upon the powers of the national authorities under home rule is a territorial one, the powers being limited to that part of the Realm which does not come under local home rule. In other words, the difference between municipal self-government as established by the Constitution and home rule is a significant one.

### IV Home Rule Powers

The main purpose of home rule is to transfer (delegate) powers and consequently responsibility from Danish political authorities to Greenland political authorities which shall administer not only such community tasks as are taken over from the state, but which shall also establish rules to be applied in administration and have an independent financial responsibility for solving the various tasks. Consequently, the main task has been to try to implement this purpose by creating the framework (the rules) in the Home Rule Act for exercising this responsibility and for the establishment of the competent executive organs. As for the text of the act see appendix II, pp. 13-16.

The home rule authorities will comprise a popularly elected »landsting« (Greenland Assembly) and a »landsstyre« (Greenland Executive) elected by the assembly, so that the administration, at least for the time being, acts on behalf of the assembly, section 1 of the act. There are, however, no provisions in the act preventing the assembly from giving the administration independent powers in due course.

Since the creation of political parties has not been

common in Greenland until recent years, and since the system of a "government party" and an "opposition" has thus, so far, not existed in the Provincial Council, it has been a tradition when appointing persons to positions of trust, for instance as members of advisory committees, first of all to attach importance to their personal attitude and objective qualifications. Consequently, as for election of the Executive and its chairman, the Home Rule Act, on the one hand, leaves open the possibility of maintaining Greenland tradition and, on the other hand, also opens up the possibility that the method of election may be adapted to the creation of political parties. The commission has refrained from statutory provisions, for instance to the effect that a small majority may automatically decide the composition of the administration but, on the other hand, has not excluded this possibility, should a majority of the assembly so desire. The final decision of this issue should be left to Greenland politicians.

Section 3 of the Home Rule Act regarding elections to the Executive is therefore a fairly flexible one being confined to the provision that the chairman of the Greenland administration as well as its other members shall be elected by the assembly. The detailed rules regarding election, including the right to vote and eligibility, shall be fixed in the Greenland Assembly Act. Under the current rules regarding the Greenland Provincial Council the right to vote is contingent upon the elector having had his permanent residence in Greenland for at least 6 months. It has been presupposed that, if so desired, the home rule authorities may maintain the condition of permanent residence for a more or less corresponding period of time as a condition for having the right to vote and being eligible for membership of the assembly.

The Home Rule Act has no regulation on the period in which the administration shall be in operation but it is expected that the assembly's rules of procedure will provide that the period shall be identical to the electoral period of the assembly and also that, under certain circumstances, the administration may be dismissed.

## V The Scope of Home Rule

It follows from the principle of national unity that certain fields cannot be transferred to home rule authorities. This applies particularly to such fields as constitutional law (including the highest branches of government, the right to vote at parliamentary elections as well as eligibility, the administration of justice, constitutional rights) external relations (including the treaty-making power), national finances (including the Central Bank and its functions), financial-, monetary-, and currency policy, defence policy, criminal proceedings and imprisonment, as well as fundamental principles regarding the law of persons, family law, inheritance law, and the law of contracts.

The fact that these fields cannot be transferred to home rule authorities does, however, not prevent continuing the adoption of specific provisions ("Greenland Acts"), having due regard to Greenland conditions, but it is up to national authorities to adopt such provisions which should not deviate from the legal position in the rest of the Realm to any greater extent than is necessary having due regard to special local conditions.

Just as under the Faroe Island home rule system there has been unanimity in relation to the Greenland home rule on the basic principle, *that legislative power and the power of the purse should not be divided*.

There has, however, also been unanimity, that this principle does not prevent that fields in which Greenland self-financing is not possible, at least not within the immediate future, may be transferred to home rule authorities, since it should be possible to grant government subsidies to such tasks. On this basis the act establishes the following distinction: –

a) Under article 4 of the act home rule authorities may take an immediate decision to take over fields which the home rule authorities are able to finance with the effect, that home rule authorities take over legislative and administrative power regarding such fields as well as the inherent expenses. Upon consultation with home rule authorities national authorities may decide that such fields, or part of such fields, shall be transferred to home rule authorities, with the same effect. The act provides that provisions adopted by the assembly and confirmed by the chairman of the administration pertaining to such fields shall be designated "*landstingslove*" (Acts of the Assembly).

b) In areas where government subsidies are required, the power to establish rules cannot be transferred to home rule authorities in quite the same manner as in areas financed by home rule authorities. In subsidized fields it is necessary to transfer powers by means of specific authorizing acts for each and every field by means of which Parliament establishes a framework by way of a few main principles for the field in question, but otherwise leaves the more detailed regulations to home rule authorities, including regulations regarding internal administration.

An authorizing act of this nature must evolve from negotiations between home rule authorities and the government regarding the extent of the authority, the timing of the transfer of powers, and the size of the government subsidy. Under section 5 of the act provisions adopted by the assembly for this type of field shall be designated "*landstingsforordninger*" (*Landsting Regulations*). In drafting section 5 emphasis was put on creating the greatest possible security, that the possibility of home rule authorities taking over fields financed through subsidies should not become an illusion through a future political development. Consequently, it has been assumed that home rule authorities have a right to take over the fields in question, even though they are financed through Danish subsidies. This was a

crucial point throughout the debate in the commission for the following reason: – If it were possible, for instance, to demand that transfer of a field in the situation under discussion could take place only by agreement, rather than on the basis of a unilateral Greenland demand, it would be possible in practice to deprive Greenland home rule of any meaning, at least for a number of years.

II. c) The fields referred to above have been listed in a special appendix to the Home Rule Act. (See appendix p. 13). In drafting the list, wishes expressed by Greenland were taken as a starting point and from the wishes expressed were selected those fields which were found of major significance and the ones best suited to transfer to home rule authorities. The list does not intend to be exclusive in the sense that other fields could not be transferred to home rule authorities on the basis of an *agreement* between national authorities and home rule authorities, should future developments make the list less appropriate, see section 7 of the Home Rule Act. The decision what additional fields to include under home rule in the future shall be made with due regard to national unity and to the Greenlanders obtaining a broad influence upon fields which are particularly relevant in relation to Greenland.

The appendix expresses the scope of the powers which Parliament may eventually transfer and the scope of the tasks which may require subsidizing. This has obviously influenced the fields enumerated in the list which is far from as detailed as the corresponding list appended to the Faroe Island Home Rule Act.

The distinction made between assembly *act* and assembly *regulations* is of no major legal significance. In both cases the powers of the assembly stem from an act adopted by Parliament. In the former case powers stem from the general provisions of section 4 of the Home Rule Act and in the latter case from a specific authorizing act. The reasons for none the less applying two different terms covering the two situations are the following: -

i) *Matters of principle:*

As already mentioned a main point has been the principle of undivided legislative power and power of the purse. In subsidized fields the power of the purse rests with Parliament. Consequently, the power to adopt *acts* in this field must remain with Parliament. There is, however, in principle nothing to prevent the assembly from issuing *regulations*.

ii) *Liability of ministers:*

The ministerial rules on liability in fields where powers are transferred under special authorizing acts, involves a duty to secure that the home rule authorities adhere to the framework established by the particular act. On the other hand, the liability does not go any further. A corresponding problem of ministerial liability does not arise in fields regulated by assembly acts. Consequently, different terms for different fields appear appropriate.

iii) *Practical considerations:*

An assembly regulation must conform to the special authorizing act. An assembly act must conform to the Home Rule Act. It is practical – and may also have a certain pedagogical value – to apply different terms to rules, the validity of which is based upon different legal sources.

## VI The International Competence

From national unity stems the distinct consequence that powers to carry on foreign relations which are part of Danish sovereignty is vested in national authorities. This applies also to the power to enter into international obligations within areas which have come under home rule. This fact has been particularly stressed in section 11 of the Home Rule Act, due to the fact that in order to implement obligations under international law in the national legal system the cooperation of the legislative assembly and/or other authorities establishing rules, will often be required.

Introducing home rule means that legislative powers, as well as other powers to establish rules, to some extent are transferred to Greenland home rule authorities. Furthermore, joint powers belonging to the national authorities and home rule authorities will be introduced, as a special feature, as far as natural resources are concerned (see further below).

In other words, where the Government's undertaking of obligations under international law becomes consequential in areas where power to establish internal rules has been transferred to home rule authorities, the latter will have to co-operate in the necessary steps of implementation, including the adoption of new rules.

Consequently, it becomes necessary, when entering into treaties, to engage in a prior consultation with home rule authorities (incidentally, this is in conformity with a practice followed already under the existing system in relation to Greenland). This has, therefore, been explicitly provided by section 13 of the act.

As a consequence of the extent of international cooperation where certain local steps (for instance a regulation of fishery) may influence international cooperation in a decisive way, including above all the negotiating position of Danish authorities, the act provides that steps which home rule authorities have in mind, the implementation of which would be of major significance to the international relations of the Realm, including the participation of the Realm in international cooperation, shall be discussed with national authorities prior to adoption. The purpose of this provision is to secure the best possible coordination between home rule authorities and national authorities in the matters in question.

Cooperation between national authorities and home rule authorities regarding Greenland interests within the *European Communities* gives rise to certain special

issues. As it is well known, Danish membership of the EC comprises Greenland, but not the Faroe Islands. This is due to the fact that the result of the referendum in Greenland, although a negative one, was combined with the results in the rest of Denmark. As for the Faroe Islands it was, on the other hand, accepted that the Faroese home rule authorities did not wish to join the EC. The Danish attitude towards the Faroe Islands created a wish in certain Greenland circles that the introduction of home rule should result in Greenland leaving the EC.

This issue created certain problems for the Home Rule Commission. In deliberating this issue the commission had to base itself on the existing constitutional system under which Greenland, together with Denmark, is a member of the EC, since the terms of reference of the commission did not include the issue regarding a possible change in the relation of Greenland to the EC.

Introducing home rule for Greenland will not *per se* involve any change in the basis for Greenland being a member of the EC. Consequently, legal acts of the EC will continue to be valid in relation to Greenland to the same extent as previously regardless of home rule being established; this includes the special arrangements which have been made regarding fishery and the exercise of the right of establishment in Greenland. A change in the association of Greenland with the EC cannot be brought about without the cooperation of national authorities and cannot in advance be regulated by the Home Rule Act.

In its report the commission did, however, stress that it had taken note of the unequivocal declaration made by Prime Minister *Anker Jørgensen* during his visit to Greenland in the summer 1977 to the effect, that the government did not intend to force upon Greenland a particular association with the EC.

Consequently, section 15 of the Home Rule Act is framed under the assumption that Greenland would continue its membership. This does not imply any position on the issue whether membership should be maintained or not in the future, and the provisions of the act do not prevent a change in the status of Greenland in relation to the EC. It is understood, that nothing contained in the EC-treaties prevents the adoption of a changed status of Greenland in relation to the EC.

The principles referred to above regarding international cooperation in general are also applicable as far the cooperation within the European Communities is concerned. However, the special nature of this cooperation creates a need for certain special rules regarding the relation between Greenland and the EC.

This must be seen in the light of the fact that certain powers have been transferred to EC institutions. Furthermore, decisionmaking within the EC differs from the one traditionally applied in adopting statutory provisions in that legal acts of the EC are not subject to any national ratification, but are immediately applicable

upon their adoption by the institutions of the EC.

The areas in which powers of Danish authorities have been transferred to EC institutions has been specified in detail in the treaties and the appending legal acts. Above all legislative power and, to a minor extent, executive and judicial power have been transferred to the EC.

The special procedure of decision-making used in the EC makes it necessary that home rule authorities are given a possibility of participating in Danish administrative organs having the task of making submissions to the government regarding Danish positions prior to negotiations in the EC, so that the Government in fixing its position to problems under negotiation relevant to Greenland is fully aware of considerations which Greenland wishes to be taken into account during EC negotiations.

There furthermore arises a need of a system of notification to home rule authorities regarding proposals in EC rules submitted to the Council of Ministers of special interest to the home rule authorities. The latter should be informed to the same extent as the one to which the Danish Parliament is informed under section 6, paragraph 2 of the EC Accession Act of October, 11, 1972.

Finally, there may be a need for a more direct Greenland participation in the cooperation, for instance by having a Greenland staff member attached to the permanent Danish EC mission.

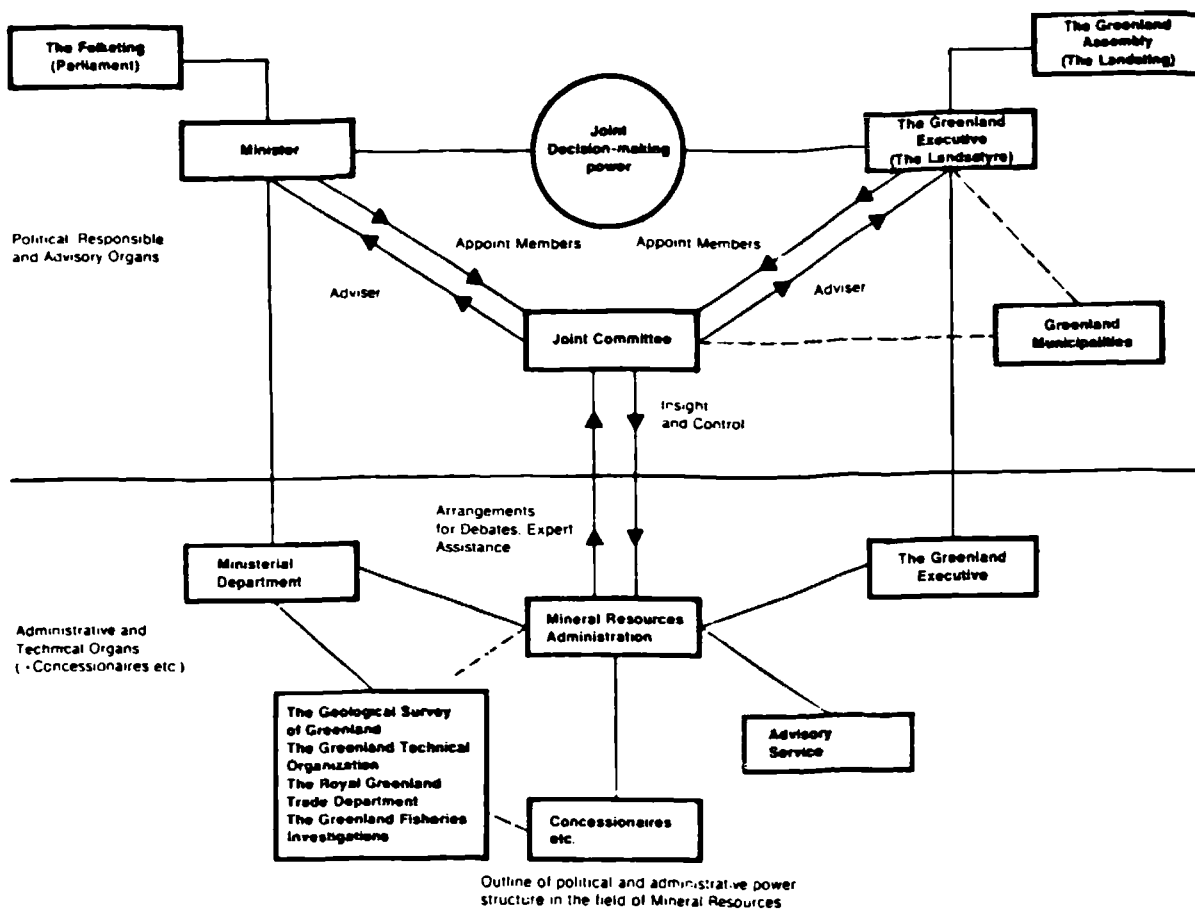
Apart from the question of information these issues are not legislative ones and therefore not mentioned in the Home Rule Act. The details of the required arrangements will furthermore depend upon what fields come under home rule at any given time. Finally, the substance of the special arrangements which are expected as far as fishery in Greenland waters is concerned will above all have a decisive influence upon the details of the system.

## VII Natural Resources

Both politically and legally the question of exploitation of mineral resources in Greenland gave rise to special problems.

Under the Greenland Mineral Resources Act of 1965 the legislative position has been that "all mineral resources in Greenland belong to the state", article 1 of the Act. Although the exclusive purpose of this provision is to establish that natural resources are not subject to private ownership, the phraseology of the Act has given rise, in later years, to major offence among the Greenland public. It is interpreted as expressing the fact, that the state, i.e. Denmark rather than Greenland, has complete powers over the natural resources with the consequence, that Greenland political authorities have no decisive word on this issue, be it in relation to actual

Fig. 2



The translations of the Danish names of the bodies, institutions etc. are not all authorized translations. \*\*

Fig. 2. The political and administrative co-operation relative to natural resources proposed by the Committee.

The sketch shows the political and administrative organs involved. In the sketch, special efforts have been made to emphasize the division, on one hand, into the political, responsible, and advisory institutions and, on the other hand, the administrative and technical organs and organisations.

As regards the political organs, the sketch elucidates the equality between the Greenland and Danish parties which is contained in the joint decision-making power. This implies equal responsibility for the joint decisions, and equal right to demand such decisions observed. The parity basis on which the Joint Committee has been set up is another expression of equality. Further, it has been found correct to include the Greenland municipalities in the sketch in view of their local decision-making power pursuant, for instance, to the Use of Land Act.

As regards the administrative and technical organisations, the sketch reflects, among other things, the need for co-ordination at the administrative level with the ministerial department as well as with the Home Rule Administration. As, today, as mentioned before, there is hardly any basis for the setting up of an administration which, within its own framework, has the technical knowledge and sufficient personnel resources in all relevant fields, the sketch is likewise based on the need for drawing on the expert knowledge and the personnel of a number of technical institutions. Further, there will be assistance from advisers in different fields. The special Mineral Resources Administration will handle all relations to concessionaires etc. except for certain technical control and supervisory tasks.

\*\* Names of the various bodies included in the chart have been left in English.

exploitation, the protection of environmental values, or the like.

Furthermore, Eskimos as well as Indians living in Canada and in the United States have lately advanced claims on what is called "aboriginal rights" to natural resources found in the areas previously occupied by former colonial powers.

These points of view, as well as the hope stemming from the existence of tremendous richness of oil, and the issuance of concessions and actual exploitation on the Greenland continental shelf in 1975 put their mark on the debate in Greenland and came to a climax in the adoption of a resolution of principle by the Greenland Provincial Council in November, 1975. The resolution was to the effect that "mineral resources belong to the permanent population of Greenland".

As for the doctrine on "aboriginal rights" as invoked in Canada and the United States it hardly seems to amount to anything but ownership of a right to use surface soil, and it appears to be connected with legal systems under which private individuals had ownership to soil as well as to resources of the underground. As evolved in Canada at any rate, the main purpose of the doctrine seems to be that the indigenous population should not be relegated to a second-rate position compared to the position of the remaining population of Canada and its provinces under the federal Constitution.

The doctrine has, however, not been recognized as a positive legal principle in Canada, nor in the United States. Furthermore, private ownership of soil is unknown in Greenland, and at the same time natural resources in Denmark are, on the whole, not subject to private ownership.

This may be seen among other things from the first Greenland Mining Act of 1934 which refers to "the soil of Greenland", whereas the Danish Mining Act of February, 1932, uses the term "underground" as the object of public ownership.

Even if the doctrine on aboriginal rights had been generally accepted as an international recognized legal principle, its substance would hardly be applicable to the situation in Greenland.

Although Greenland conception of the current legal position is to some extent based upon a misinterpretation of the Danish Mining Act there is, on the other hand, no doubt that the permanent population of Greenland has seen the current arrangement as an infringement, and during the debate in the commission it was obvious that the previous phraseology could not be maintained which, incidentally, was not even desired by Denmark.

From Greenlandic side it was further claimed that sovereignty over natural resources stems from the Greenlandic people's right of self-determination as formulated in the Covenant of Human Right Art. 2 paragraph 2. Some members of the commission felt that the Greenlanders were not a "people" in the legal sense

of the Covenant. Others felt that the Greenlanders already have used their right to self-determination in 1953 by opting for the solution that Greenland should constitute an integral part of the Kingdom of Denmark. The commission did not express its view on this matter, but concentrated its deliberations on a practical solution.

The basic principles of the Home Rule Act's provisions on natural resources are the following:

that Greenland and Denmark shall have equal rights when it comes to laying down the lines for the development policy and for adoption of important concrete resolutions. This principle of *equality* between the Greenland home rule authorities and national authorities is an expression of the fact that in the area of natural resources vital interests are at stake for the Greenland society as well as for the nation as a whole.

that as a consequence of the principle of equality there should be established a *joint* decision-making power vested in the national authorities and the home rule authorities in regard to major decisions in the area of natural resources, so that the national authorities as well as the home rule authorities should be entitled to oppose a development or concrete resolutions which the party in question considers undesirable (*a mutual right of veto*), and

that there should be established a practical *cooperation* between political institutions and the administrative and technical capacity necessary for public administration in the area of natural resources, and that the home rule authorities should have the same possibility of applying expert knowledge in the decision-making process as the national authorities.

These principles have been laid down in section 8 of the Home Rule Act which runs as follows:

(1) The resident population of Greenland has fundamental rights to the natural resources of Greenland.

(2) To safeguard the rights of the resident population in respect of non-living resources and to protect the interests of the unity of the Realm, it shall be enacted by statute that preliminary study, prospecting and the exploitation of these resources are to be regulated by agreement between the Government and the Landsstyre.

(3) Before any agreement under subsection (2) is entered into, any member of the Landsstyre may demand that the matter be laid before the Landsting, which may determine that the Landsstyre may not consent to an agreement of the proposed content.

The first paragraph of this section amounts to a political declaration of principle. Although an actual legal construction is therefore hardly possible, one may stress that the political moral demands supporting the recognition of fundamental rights to natural resources of the

permanent population stem, above all, from an emotional cohesiveness between a population and the land which it has inhabited for centuries. This cohesiveness naturally leads to demands for certain rights not covered by traditional legal parlance.

The official comments to the act further state that the rights to be taken into account in framing the arrangement on natural resources are the following: –

1. A right to a decisive influence in the area of natural resources, in particular an influence upon the framing of a natural resources policy and the speed with which it should be implemented.
2. A right to secure contraction of any possible detrimental influences upon the physical or social environment so that the traditional businesslife, culture, and way of life of Greenland is preserved.
3. A right to a dividend of enterprises exploiting natural resources with a view to creating a financial basis for an improvement of living conditions, particularly in the long run.

None of these rights are absolute rights in the legal sense, and they must also be seen in the light of the constitutional structure desired for the nation and the population, which has been acknowledged by both parties.

Consequently, the provisions of the Home Rule Act on the natural resources arrangement have been framed as a *mutual right of veto*. It is part of the arrangement that Greenland's possibility of exercising the right of veto is a "double" one, in the sense that an issue subject to the right of veto shall be submitted to the assembly before an agreement is entered into, provided this is requested by merely one member of the administration. In this way one secures not only an actual right of vote for the administration as such during the negotiations with the Government (at which stage it may be difficult for the Greenland negotiators to exercise the right of veto), but one also secures that the issue whether Greenland has a right of veto is decided by the institution from which political powers stem, namely the Greenland Assembly. The joint powers of decision-making mean therefore that no fundamental decisions in the area of natural resources can be adopted, if either the administration or the Government is opposed thereto. It goes without saying, that the right of veto following from the joint powers of decision, cannot be invoked in relation to decisions which are a mere consequence of earlier valid decisions.

In order to secure continued information regarding developments in the area of natural resources it has been proposed to establish a joint *Danish-Greenland committee*, which should also be competent to make suggestions to the Government and the home rule authorities respectively regarding matters for decisions. (See fig. 2).

The joint committee, consisting of representatives of the home rule authorities as well as the Government, is an important element in the arrangement regarding

natural resources, in that it is expected that any disagreement between the parties participating in the decision-making process may be clarified in the joint committee, so that a direct confrontation between the home rule authorities and the Government can be avoided.

In principle the right of veto may serve its purpose without ever being explicitly exercised. The existence of the right of veto will in itself be a reality in relation to the administration's drafting of proposals as well as in relation to debates and submissions from the joint committee, and direct negotiations between the Government and the home rule authorities. The mere existence of the right of veto may be seen as a means available to both parties to force a development or concrete decisions agreeable to them. The right of veto will namely enable them to specify the particular assumptions and conditions upon which their accession to a proposed decision rests. In other words, the right of veto may operate as an effective instrument without actually being exercised.

Various special problems arise in connection with the joint decision-making competence and the participation of the Realm in *international cooperation*. It is obvious, that the competence to participate in international cooperation is vested in the Government under section 19 of the Danish Constitution also in the area of natural resources. But, at the same time, it also follows from section 8 of the Home Rule Act that internally the competence in this area is vested jointly in the Government and the home rule authorities. This situation necessitates a clarification of the question, how the competence of the Government in international relations might influence the joint decision-making competence.

Through its participation in the *International Energy Agency* (IEA), as well as through its membership of the EC, Denmark is engaged in international cooperation with other industrialized countries in the field of energy policy. One of the main aims of these endeavours is to reduce the present vulnerability of industrialized countries as a consequence of their high degree of dependency upon imported oil. One tries to fulfil this aim both in the IEA and in the EC through reductions in consumption and the development of alternative sources of energy.

International cooperation in the field of energy and natural resources, including that taking place in the IEA, does not at present include obligations binding the Government to take concrete steps with a view to exploiting energy resources.

It is certainly possible that this cooperation gradually may be extended in a way where participating countries undertake concrete obligations in terms of energy policy. In the long run one cannot exclude an identical development in relation to natural resources other than energy.

In order to avoid any difficulties regarding the subsequent internal implementation of such international obligations, it would be appropriate for the Govern-

ment to consult with home rule authorities to the greatest possible extent prior to entering into any obligations, just as is done in the case of the Faroe Islands. Until the result of such consultation is known, it will normally be possible for the Government to make a reservation on the applicability of the obligations in relation to Greenland. One may, however, encounter a situation where major considerations regarding the nation as a whole, including considerations regarding Greenland's economic development and supply of natural resources as well as the overall position of the nation in international cooperation, may lead the Government to undertake certain international obligations. Just how the specific situation may evolve cannot be predicted in advance. On the other hand, it is obvious that the situation would be one where due account should be taken of neither specific Danish interests nor specific Greenland interests. The crucial issue in such a situation will rather be common Danish/Greenland interests (if for instance the financial or supply situation in Denmark should be threatened the same threat would apply to Greenland). In such circumstances the joint decision-making competence means, that the Government and the home rule authorities must jointly establish the necessary provisions of implementation. It should, however, be stressed that the joint decision-making competence, even in such exceptional circumstances, in practice will result in special interests (for instance those of environment or social policy) being secured by concrete steps being outlined in detail.

The problems here referred to are not new ones. Similar problems arose in connection with the Faroe Islands Home Rule Act which empowered the government to undertake international obligations, also in areas which were particular to the Faroe Islands, and the implementation of which required the cooperation of the home rule authorities. This arrangement has now been in force for some 30 years, without any insolvable conflicts ever having arisen.

As for the *cooperation within the EC* in particular one must state, that in its present form it does not involve any obligations which make it incumbent upon the Government to take concrete steps with a view to exploiting natural resources, including energy, but conceivably the cooperation may gradually be extended in such a way that participating countries undertake obligations of this nature.

A contribution made by the EC regarding energy and other natural resources constitutes an integral part of a cooperation including all major aspects of economic life. Furthermore, cooperation within the EC differs from other types of international cooperation, partly as far as the decision-making process is concerned, partly as far as the way in which rules and regulations implemented is concerned. Consequently, one cannot treat in isolation the relation between arrangements regarding natural resources and EC cooperation, but any arrangement will have to be established by means of the

provisions of section 15 of the Home Rule Act referred to above.

The issue regarding the division and application of any possible future *income from natural resources* accruing to the Treasury involved serious elements of uncertainty at the time the Home Rule Act was adopted, both in relation to the question whether natural resources actually existed, the magnitude of any possible resources, the financial outcome of any exploitation as well as the timing of it. Against this background the Home Rule Commission proposed that public revenue from natural resources in Greenland should, first of all, be applied for compensating the previous transfer of capital from Denmark to Greenland. There was a joint Danish/Greenland desire that home rule authorities should become independent of subsidies from Denmark for the solution of their tasks *pari passu* with any increase in the income from natural resources.

Any other additional public revenue should be for the benefit of the nation as a whole as well as for Greenland, so that part of such additional income should belong to Greenland. Subsequent agreements between the Government and the home rule authorities shall solve the problems how great a part shall fall to Greenland and how it is to be applied and invested. At any juncture either party may require that negotiations be undertaken with a view to entering into such an agreement. During the negotiations in the Home Rule Commission it was agreed, that the basis for such an agreement, to be established in an act of Parliament, should be that Greenland's share shall belong to the home rule authorities and be subject to their decision only. In order to secure a sound financial basis for Greenland in the long run, there should be made certain deposits (by way of a trust fund or the like) of revenues from natural resources over and above the need in terms of a current Greenland budget. Revenue placed in the trust fund should be administered by home rule authorities, which should also have the exclusive right to dispose thereof. Within the framework of the provisions of future legislation it is incumbent upon home rule authorities to secure, that the investing as well as the application of the funds take due regard to the general financial, monetary, and currency policy of the nation.

As for the Danish part of the revenues from natural resources it has been proposed, that they should become part of the national budget in line with other sources of national revenue and thus be subject to the general decisions of Danish appropriating authorities.

## VIII The Language Problem

Article 9 of the Home Rule Act takes up a special subject namely that of the Greenland language. The idea is, that the introduction of home rule should also lead to a formal recognition of the Greenland language as the main language of Greenland.

In an overriding way the Greenland language is an integral part of the way in which the population of Greenland conceives its own identity, and it is consequently of major significance in maintaining and strengthening this identity.

As a national language Danish is, firstly, the linguistic link between population groups of the entire nation, but as for Greenland it is, furthermore, a means of communication with the world at large. due to the fact that, conditions being what they are, this communication takes place through Danish authorities and Danish institutions. Above all, the major part of higher education must take place at educational institutions in Denmark. Consequently, the Home Rule Act provides for thorough teaching also of the Danish language.

In public relations both languages may be applied on equal terms. This involves, above all, that both languages may be applied in the relation between Greenland and Danish authorities, and that any citizen of Greenland in addressing or contacting public authorities may claim, that the contact be carried out in that language which the person in question prefers to use. Incidentally, this is in line with the practice which has been used by Greenland courts in later years.

## IX Home Rule Economy

Implementing home rule presupposes that the new order shall lead neither to savings nor to additional expenses for the Government. Consequently, government subsidizing of enterprises taken over by home rule authorities shall be based upon the expenses which the Government has so far incurred for the purposes in question. The areas which presumably should be transferred by 1 January, 1981, will necessitate government subsidies to the tune of some 295 mill. Danish kr. per year.

As for the methods of subsidizing it has been proposed that subsidies should be granted as a lump sum – in other words without any allocation per area. In this way Greenland authorities are given the greatest possible freedom in giving priority to various applications of the funds within the frames of authorizing legislation.

## X Trade in Greenland and its Development

It appears from the Home Rule Act, that the purpose of home rule is to place the responsibility for developments in the Greenland society to the home rule authorities. These developments will be decided not only by political decisions, in the narrow sense of the word, pertaining to Greenland, but also by Greenland

business life – above all fishery, hunting, and sheep-breeding – and the development of trade.

So far, this development has been strongly influenced by the activity within the fields of production, commerce and transport of the Royal Greenland Trade Department (Den kongelige grønlandske Handel – KGH). Although a considerable liberalization of business life has taken place during the later decades, one must recognize that even today the KGH is a decisive element in Greenland business life.

On the other hand, everybody recognized that due to the difficult economic terms of traditional Greenland business – influenced by climate and international price-fluctuations – a transfer of all of the functions of the KGH to home rule authorities would involve such major difficulties as to make a simultaneous transfer inappropriate. Consequently, it has been proposed that the transfer shall take place in stages over a number of years and in accordance with a detailed plan, but in such a way that the functions of the KGH within the fishery sector are the first ones to be transferred.

In conjunction with the Home Rule Act a Royal Greenland Trade Act was therefore also adopted, and this Act provides that steps with a view to transferring the production and sales activities of the KGH to home rule authorities shall be initiated at the time when the Act enters into force. A new governing board is also established and one half of the board members are to be appointed on the basis of proposals from home rule authorities. The governing board shall establish a purely Greenland executive board which is to follow developments and act in a consultative capacity to the KGH during the period until final transfer has been brought about.

The basic idea of these arrangements is to create an organ which may be subject to a process of education and adaption, so that some time in the future Greenland institutions may be able to take over the activities of the KGH without any detrimental effect to this important, but in many ways vulnerable, activity.

## XI Conflicts

Article 18 of the Home Rule Act regulates how conflicts arising in relation to the division of powers between home rule authorities and national authorities, are to be solved. It is proposed to establish a board consisting of two members appointed by the Government, two members appointed by home rule authorities, and three Supreme Court Judges to be appointed by the Chief Justice of the Supreme Court, one of whom is to be appointed chairman. An issue is finally decided where the four members appointed by the Government and the home rule authorities are in agreement. Otherwise, the issue shall be decided by the three Supreme Court Judges.

This method of combining political and legal elements in the decision-making and giving the political aspects an overweight may appear to be a peculiar one. It means at any rate that it is not possible to submit to the board involved all questions regarding doubtful interpretations pertaining to a transgression of authorizing legislation. Such questions will have to be decided by the ordinary courts under section 63 of the Danish Constitution and on the basis of fundamental principles of the law of public administration. Among other things due to the fact that there are no provisions empowering private citizens to bring a case before the board, one must assume that the board is competent to take a position only on political conflicts between the Government and home rule authorities which it has not been possible to solve in any other way. Although the provision involves a number of unsolved questions, it has been found useful to include such a provision in the Home Rule Act due to the fact that a completely identical provision is found in the Faroe Islands Home Rule Act. On this point the desire to have identity between the Faroe Islands home rule and the Greenland home rule has had considerable weight.

As for the Faroe Islands the board is not in permanent existence and, incidentally, so far it has never functioned.

## XII Denmark and Greenland

The Greenland Home Rule Act together with accessory legislation serves the purpose of meeting Greenland wishes within the bounds of local influence upon political decisions which in later years has characterized developments also elsewhere in the Danish society. The basic philosophy may be expressed in the terms, *that the population of Greenland does not wish national independence but improved possibilities of strengthening and expanding the identity of Greenland through an increased independent responsibility.*

The Act is likewise an expression of the fact, that the principle of *equality* between Greenland and the rest of Denmark has been abandoned in the light of a recognition of the impossibility of creating equality between population groups living under conditions so much at variance. Instead the act is based upon the principle of *equal rights* regarding responsibility and powers concerning the future of the respective societies.

Those who have worked on the drafting of this legislation are fully aware that introducing home rule in Greenland means entrusting to the population of Greenland and its elected representatives not only important, but at the same time difficult and perhaps even onerous tasks.

It is therefore but natural that implementation of home rule must take place as a gradual process and on the basis of a carefully worked out schedule as has also

been the Greenland desire. The report of the Home Rule Commission makes a point of stressing, that a sense of responsibility and mutual understanding in implementing the transfer of public tasks, in assessing the results achieved, and in the future overall relation between the two parts of the Realm will be of decisive importance to home rule evolving in a harmonious manner which will be satisfactory to Greenland as well as to Denmark.

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## Appendix II

### The Greenland Home Rule Act

Act. No. 577 of 29 November 1978

We, Margrethe the Second, by the Grace of God Queen of Denmark make it known:

Recognizing the exceptional position which Greenland occupies within the Realm nationally, culturally and geographically, the Folketing has in conformity with the decision of the Greenland Provincial Council passed and We by Our Royal Assent confirmed the following Act about the constitutional position of Greenland within the Realm:

#### Chapter I

##### Home Rule Authorities

##### Section 1

(1) Greenland is a distinct community within the Kingdom of Denmark. Within the framework of the unity of the Realm, the Greenland home rule authorities shall conduct Greenland affairs in accordance with the provisions laid down in this Act.

(2) The Greenland home rule authorities shall consist of an assembly elected in Greenland, to be called the Landsting, and an administration headed by a Landsstyre (Executive).

##### Section 2

(1) Members of the Landsting shall be elected for a four-year term in general, direct and secret elections.

(2) Detailed rules on elections, including such matters as the franchise, eligibility for election, and the number of members of the Landsting, shall be laid down by Act of the Landsting.

(3) The Landsting shall make its own standing orders.

### Section 3

The Landsting shall elect the Chairman and the other members of the Landsstyre. The Chairman of the Landsstyre shall assign responsibilities between its members.

### Chapter 2

#### Powers of the Home Rule Authorities

### Section 4

(1) The home rule authorities may determine that jurisdiction in any field listed in the Schedule to this Act, or in part of such field, shall be transferred to the home rule authorities.

(2) The home rule authorities shall exercise legislative and executive power in fields transferred under subsection (1), and shall assume responsibility for expenditure associated with them.

(3) The same shall apply where the central authorities of the Realm, after negotiation with the home rule authorities, determine that jurisdiction in such fields or parts of such fields shall be transferred to the home rule authorities.

(4) Bills regarding such fields of jurisdiction as are passed by the Landsting and signed by the Chairman of the Landsstyre shall be called Acts of the Landsting.

### Section 5

(1) Where jurisdiction over a field or part of a field listed in the Schedule to this Act has not been transferred to the home rule authorities under section 4, the central authorities of the Realm may after negotiation with the home rule authorities by statute determine that the home rule authorities shall assume regulatory jurisdiction for and administer it. Subsidies to be paid in such fields shall be fixed by statute.

(2) Draft Regulations regarding such fields of jurisdiction as are passed by the Landsting and signed by the Chairman of the Landsstyre shall be called Landsting Regulations.

### Section 6

(1) Landsting Bills and draft Landsting Regulations which have been passed cannot be carried into force until they have been signed by the Chairman of the Landsstyre and promulgated in accordance with provisions laid down by Act of the Landsting.

(2) Within a period of 8 days the Landsstyre may resolve that a Bill or draft Regulation is not to be signed until passed by the following session of the Landsting. Should that session fail to pass it unamended it shall lapse.

### Section 7

(1) The central authorities of the Realm may after negotiation with and having secured the consent of the home rule authorities by statute determine that jurisdiction in fields not listed in the Schedule to this Act

shall be transferred to the home rule authorities, section 4 (2) and (4) or section 5 applying correspondingly.

(2) In determining in which fields jurisdiction should be transferred to the home rule authorities under subsection (1), regard shall be had to the unity of the Realm and to the desirability of the home rule authorities' receiving an extensive role in matters which particularly affect Greenland interests.

### Section 8

(1) The resident population of Greenland has fundamental rights to the natural resources of Greenland.

(2) To safeguard the rights of the resident population in respect of non-living resources and to protect the interests of the unity of the Realm, it shall be enacted by statute that preliminary study, prospecting and the exploitation of these resources are to be regulated by agreement between the Government and the Landsstyre.

(3) Before any agreement under subsection (2) is entered into, any member of the Landsstyre may demand that the matter be laid before the Landsting, which may determine that the Landsstyre may not consent to an agreement of the proposed content.

### Section 9

(1) Greenlandic shall be the principal language. Danish must be thoroughly taught.

(2) Either language may be used for official purposes.

### Section 10.

(1) The home rule authorities shall be subject to such obligations arising out of treaties and other international rules as at any time are binding on the Realm.

(2) The powers delegated to international authorities under section 20 of the Constitution shall at all times prevail over the powers of the home rule authorities.

(3) The Government may order the home rule authorities to take such measures as may be necessary to ensure the observance of subsections (1) and (2).

### Chapter 3

#### Relations with the central authorities

### Section 11

(1) The central authorities of the Realm shall have jurisdiction in questions affecting the foreign relations of the Realm.

(2) Measures under consideration by the home rule authorities which would be of substantial importance for the foreign relations of the Realm, including participation by the Realm in international cooperation, shall be discussed with the central authorities before any decision is taken.

### Section 12

(1) Bills which include provisions which exclusively

concern Greenland shall be referred to the home rule authorities for their comments before they are introduced in the Folketing.

(2) Draft administrative orders which include provisions which exclusively concern Greenland shall be referred to the home rule authorities for their comments before they are issued.

(3) Statutes and administrative orders which are of particular importance to Greenland shall be referred to the home rule authorities for their comments before being put into force in Greenland.

#### Section 13

Treaties which require the assent of the Folketing and which particularly affect Greenland interests shall be referred to the home rule authorities for their comments before they are concluded.

#### Section 14

(1) Unless the central authorities in individual cases otherwise determine, the home rule authorities' comments shall be submitted within six months after the date on which the proposals were referred to them under sections 12 and 13.

(2) If proposals cannot be referred to the home rule authorities due to compelling circumstances, the statute, administrative provision or treaty shall be referred to the home rule authorities for their comments as soon as possible.

#### Section 15

(1) Within the framework of section 11 the Government shall after consultation with the Landsstyre lay down guidelines for the handling of matters of particular interest to Greenland in the European Community Institutions.

(2) The home rule authorities shall be kept informed of proposed legislation before the Council of the European Communities which particularly affects Greenland interests.

#### Section 16

(1) The home rule authorities may demand that in countries in which Greenland has special commercial interests Danish diplomatic missions employ officers specifically to attend to such interests. The central authorities may determine that expenditure to this end be borne by the home rule authorities.

(2) The central authorities may after negotiation with the home rule authorities empower the home rule authorities to advance special Greenland interests by taking part in international negotiations of special importance for Greenland's commercial life.

(3) Where matters of particular interest to Greenland are at issue, the central authorities may on a request by the home rule authorities authorize them to negotiate directly, with the cooperation of the Foreign Service,

provided such negotiation is not considered incompatible with the unity of the Realm.

#### Section 17

(1) The central authorities' chief representative in Greenland shall be the Rigsombudsmand (Commissioner).

(2) The home rule authorities may invite the Rigsombudsmand to take part in debates in the Landsting or the Landsstyre.

(3) The home rule authorities shall inform the Rigsombudsmand as soon as possible of new Acts of the Landsting and Landsting Regulations, and of other legislation of general application made by the home rule authorities.

#### Section 18

(1) Should any doubt arise between the central authorities and the home rule authorities concerning their respective jurisdictions, the question shall be laid before a board consisting of two members nominated by the Government, two members nominated by the home rule authorities and three judges of the Supreme Court nominated by its President, one of whom shall be nominated as Chairman.

(2) If the four members nominated by the Government and the home rule authorities reach agreement the question shall be considered settled. If these four fail to reach agreement the question shall be decided by the three Supreme Court judges.

(3) The Government may suspend an enactment or decision of the home rule authorities which has been placed before the board until such time as the board's decision is taken.

#### Chapter 4

##### Entry into force and transitional provisions

#### Section 19

(1) Statutory provisions and regulations applicable to Greenland shall remain in force subject to such changes as arise out of this Act, until amended or repealed by the appropriate authority.

#### Section 20

(1) The date on which this Act is to enter into force shall be fixed by statute.

(2) The Rigsombudsmand shall take up the duties formerly exercised by the Governor of Greenland, with such changes as arise out of this Act.

#### Schedule

1. Organization of home rule in Greenland.
2. Organization of local government.
3. Direct and indirect taxes.
4. The Established Church and dissenting religious communities.
5. Fishing in the territory, hunting, agriculture and reindeer breeding.

6. Preservation.
7. Country planning.
8. Legislation governing trade and competition including legislation on restaurant and hotel business, regulations governing alcoholic beverages, and regulations governing closing hours of shops.
9. Social Welfare.
10. Labour market affairs.
11. Education and cultural affairs, including vocational education.
12. Other matters relating to trade, including State-conducted fishing and production; support and development of economic activities.
13. Health services.
14. Rent legislation, rent support, and housing administration.
15. Supply of goods.
16. Internal transport of passengers and goods.
17. Protection of the environment.