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COMMISSION ON HUMAN RIGHTS

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DRAFT INTERNATIONAL COVENANT ON
HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

Denmark: Proposal for a Federal State article.

Art.

1. The Government of a Federal State may at the time of signature, ratification or accession to this covenant make a reservation in respect of any particular provision of the Covenant to the extent that the application of such provision, under the constitution of the Federal State, falls within the exclusive jurisdiction of the constituent states, provinces or cantons. The Secretary-General of the United Nations shall inform other States parties to the Covenant of any such reservation.
2. When making a reservation under paragraph 1, the Government of the Federal State shall transmit to the Secretary-General, for communication to other States parties to the Covenant, a brief statement as to the status of the law of the constituent states, provinces or cantons with regard to the subjects covered by the reservation.
3. When a reservation is made under paragraph 1, the Federal Government shall bring the relevant provisions of the covenant to the attention of the appropriate authorities of the constituent states, provinces or cantons and

recommend that such steps be taken as may be necessary to give full effect to the provisions.

4. A reservation made under paragraph 1 may at any time be withdrawn in whole or in part. Withdrawal of a reservation is effected by notification to the Secretary-General, who shall inform the other States parties to the Covenant.

5. As long as and to the extent that a reservation made under paragraph 1 remains in force, the Government of the Federal State may not in relation to other States parties to the Covenant invoke the relevant provisions of the Covenant.

Explanatory note.

The representative of Denmark maintains the opinion, as previously stated on behalf of his Government, that it would be preferable not to include a "federal states clause" in the Covenant. Indeed, such a clause will tend to introduce an element of inequality between obligations of the various States parties to the Covenant, in so far as federal states under such a clause will be relieved from obligations which unitary states must fulfill without qualification. It is a well established principle in international law that no state can invoke provisions of its constitution as an excuse for not fulfilling its international obligations, and any deviation from this general principle to the advantage of only one category of states would, it is submitted, tend to weaken the principles of equality and reciprocity on which international relations must be based.

In view, however, of the General Assembly's resolution 421 (V), part C., according to which the Commission on Human Rights is requested "to study a federal State article and to prepare recommendations which will have as their purpose the securing of the maximum extension of the covenant to the constituent units of federal States, and the meeting of the constitutional problems of federal States" the above proposal is submitted. Its purpose is,

in addition to that indicated by the General Assembly, to obviate to the greatest possible extent the disadvantages resulting from the status of inequality which any special regard for federal states will inevitably entail. In pursuance of these divergent purposes, proposals are made to the effect

- a) that Federal States may ratify the covenant even if the implementation of certain of its provisions under their constitutional systems fall within the reserved powers of their constituent units;
- b) that authorities of constituent states shall be encouraged to take any necessary action with a view to giving effect to those provisions which fall under their reserved powers;
- c) that limitations of obligations of Federal States shall result only from express reservations in respect of particular provisions, not from the automatic application of a Federal States clause;
- d) that other states parties shall be kept informed of the extent to which a Federal State give effect to the provisions covered by reservations; and
- e) that a Federal State which, because of a reservation, is "immune" against complaints regarding violations of a provision in the Covenant shall not itself be able to make such complaints against other States parties.