



**International Convention on
the Elimination
of all forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/SR.1476
22 May 2003

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-ninth session

SUMMARY RECORD OF THE 1476th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 2001, at 3 p.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Initial report and second and third periodic reports of the United States of America
(CERD/C/351/Add.1; HRI/CORE/1/Add.49) (continued)

1. At the invitation of the Chairman, the members of the United States delegation resumed their places at the Committee table.
2. Mr. BOYD (United States of America), replying to questions put by the members of the Committee at the previous meeting, referred initially to the matter of the legal status of treaties between the United States and Indian tribes. He explained that such treaties differed from foreign treaties since, under the law, Indian tribes were “domestic dependent nations” of the United States. Congress could unilaterally abrogate Indian treaties provided it clearly expressed an intention to do so.
3. Also, the Convention on the Elimination of Racial Discrimination did not require States parties to incorporate its provisions into their domestic law. It was a basic principle of international law that States determined how best to carry out their obligations under international agreements, which the United States did by passing implementing legislation when necessary. However, the question was not whether the Convention should be incorporated into United States law but whether the obligations assumed by the United States in adhering to that instrument were guaranteed to its people.
4. Regarding the role played by the Supreme Court in the application or, in the present case, non-application of some provisions of the Convention, he explained that the United States did not rely on the principle of the independence of the judiciary to justify any failure to comply with its obligations under the Convention, and the United States was in fact in compliance with those obligations. Its reservation with respect to the application of article 4 of the Convention was concerned only with those provisions of that article whose effect would be to restrict freedom of speech and association as protected by the Convention. Hence, the Supreme Court, in interpreting and applying constitutionally permissible restrictions on freedom of speech, determined the contours of article 4 of the Convention.
5. He pointed out that a debate on the constitutionality of special measures to promote the advancement of certain racial or ethnic groups had been taking place in the United States for several years, involving numerous Supreme Court decisions. It was expected that the Supreme Court, in its ruling in the case of Adarand Constructors, Inc. v. Mineta currently pending before it, would further articulate the constitutional standards to be applied in that area. However, article 2 imposed no obligation on States parties to utilize particular race-conscious measures.
6. He further explained that the United States strongly condemned disparate treatment of racial and ethnic minorities, especially in the criminal justice system, which prohibited discrimination on the basis of race or ethnicity. In a 1996 judgement, the Supreme Court had unanimously ruled that the American Constitution expressly prohibited selective enforcement of the law based on racial considerations, in accordance with the Fourteenth Amendment, and that racial profiling was therefore unconstitutional. Pursuant to Section 1983 of Title 42 of the United States Code, the federal courts had permitted lawsuits against police officers who engaged in racial profiling and many claimants had thus been able to obtain substantial damages. The Department of Justice could also bring legal action to enforce federal financial measures to ensure compliance with the constitutional provisions prohibiting racial discrimination by state and local law enforcement agencies.
7. He reaffirmed that the fight to eradicate racism required continued and constant vigilance. The President of the United States, who had declared that racial profiling had to be ended (para. 188 of the report), had directed the Attorney General to review the federal law enforcement authorities’ use of such practices. The Attorney General was coordinating the Federal Government’s efforts to collect data on those practices and to develop specific recommendations aimed at eliminating them. The

Civil Rights Division of the Department of Justice, which was actively involved in efforts to eradicate racial profiling, was able to provide technical assistance to state and local police departments that might experience problems of racial profiling and wish to implement reasonable and meaningful measures to eliminate them. Under the leadership of the President of the United States, the Attorney General and national police organizations, substantial reforms had been undertaken to correct such problems.

8. With regard to numerical disparities in incarceration levels, he reaffirmed that the emphatic position of the United States Government was that racial discrimination was a wrong that must be eliminated wherever it was found, especially in the criminal justice system, being aware that “no country or society is completely free of racism, discrimination or ethnocentrism” (para. 20). Also, the causes of numerical disparities in incarceration rates for people of different races were complex and depended on a number of factors that could be related not only to racial discrimination in the criminal justice system but also to other causes, such as differences in educational opportunities and family background (para. 347). It should also be borne in mind that numerical disparities related not only to the inmate population but also to the communities populated by racial and ethnic minorities, which were the victims of a disproportionate number of crimes.

9. Concerning the mandatory minimum penalties (para. 309) laid down for possession of crack and powder cocaine (*ibid.*), he explained that the Sentencing Commission and the Attorney General were continuing to examine the disparities between the penalties established under the federal sentencing guidelines for the distribution of crack cocaine and powder cocaine, and recalled that the Clinton administration had requested Congress to reject the Sentencing Commission’s recommendation to equalize the penalties for crack cocaine and powder cocaine at the lower, powder cocaine sentencing levels (para. 316). Whatsoever the outcome of the matter, it was clear that the United States had to recommit itself to dealing more effectively with the issues of poverty, substandard education and high rates of illegitimacy and other social problems that continued disproportionately to plague people of colour, especially African-Americans.

10. He recalled that discrimination based on race or ethnicity within the criminal justice system was prohibited in the United States and that all Americans had the constitutional right to be free of excessive force and racially discriminatory police and prosecutorial conduct. It had accordingly been possible to prosecute and incarcerate the police officers guilty of beating Rodney King. More recently, in New York, a police officer found guilty of assaulting a black detainee had been sentenced to 15 years and 8 months in prison and ordered to pay more than 250,000 dollars in restitution. The law enabled Civil Rights Division lawyers to prosecute police officers who committed acts of racist brutality or racial profiling. The Department of Justice investigated about 2,500 reports of police misconduct every year and the Federal Government played an active prevention role by bringing lawsuits against law enforcement authorities whose agents engaged in such misconduct. It provided frequent training to police organizations, stressing the need for criminal law enforcement to be performed in a non-discriminatory and fair manner.

11. Regarding the position of the United States with respect to racial disparities in the application of the death penalty in the United States to the detriment of Blacks, in particular juveniles, he explained that the Constitution and federal laws laid down strict protections to ensure that race did not influence decisions to call for or impose the death sentence, whether on the part of judges, prosecutors or jurors. When returning a verdict, each jury was required to submit a certificate, signed by each juror, declaring that his or her verdict would have been the same regardless of the race, colour, religious beliefs, national origin or gender of the defendant or victim. Under existing procedures, attorneys could not decide unilaterally whether to seek the death penalty but must submit all cases involving capital charges to a central review procedure for consideration by a committee of senior attorneys. However, the Attorney General made the final decision whether to seek a capital sentence. According to the Department of Justice report for 2000, no decisions of the committee had been made to seek the death penalty at higher rates for Blacks or Hispanics than for Whites. Further data on the matter provided no evidence that minority defendants were subjected to bias or otherwise disfavoured in decisions concerning capital punishment. The Department of Justice review had

suggested that changes could be made to promote public confidence in the fairness of the process and to improve its efficiency.

12. With regard to juveniles, he pointed out that federal law did not provide for the execution of offenders who had been juveniles at the time of the offence. The question of the death penalty, and specifically whether it should be applied to juveniles, was the subject of considerable debate in the United States. The laws concerning the death penalty varied among the states. Some, such as Massachusetts, had abolished it entirely, others had refused to extend it to juveniles and still others, such as Illinois, had imposed a moratorium on the death penalty so that issues relating to its administration could be studied further and determinations could be made about the reliability of a system that provided for it in the case of murders committed under egregious circumstances.

13. No centralized system existed for the collection of data required for the compilation of statistics on racial discrimination in jails. Nevertheless, the State party strongly condemned racial segregation and discrimination in prisons and its laws strictly forbade such practices, in particular under the Equal Protection Clause of the Fourteenth Amendment and under the Civil Rights of Institutionalized Persons Act, which authorized the Department of Justice to enforce affected persons' constitutional rights, and Title III of the Civil Rights Act of 1964, which prohibited discrimination in public facilities. Also, under the Constitution, inmates could themselves file lawsuits over racial discrimination in the federal prison system.

14. Mr. CRANER (United States of America), speaking on the subject of the Shoshone, said that many Native Americans' tribal land claims were based on aboriginal title, dating from the United States colonial period, which conferred property rights over certain lands on the indigenous populations, including hunting, fishing and other usufructuary rights. While aboriginal land rights were not expressly protected by the Fifth Amendment, Congress had taken measures to compensate tribes directly for the loss of their rights, in particular through the Indian Claims Commission established to resolve Indian claims against the Federal Government. However, the legal complexities of the issue, which was concerned with the rights of one of the country's 560 Indian tribes, required the Government to consult the regional offices of the Department of the Interior that dealt with the Shoshone tribe.

15. With regard to disparities in health care and education among communities, the Bush administration had entrusted the Department of Health and Human Services with responsibility for overcoming such disparities. The Department was implementing "Healthy People 2010", an initiative whose goal was the elimination of racial and ethnic disparities in health care by the year 2010. It had prepared an action plan aimed at ensuring full access to quality health care, conducting research to prevent and treat diseases that disproportionately affected minorities eliminating disparities through, *inter alia*, education and public and private sector cooperation. A national centre on minority health and health disparities had been established in the national institutes of health to conduct and support research, training, dissemination of information and other activities relating to the status of racial and ethnic minorities regarding health care. The Department was also promoting capacity-building activities in medically under-served communities, focusing on research infrastructure development. It was supporting education and outreach programmes and conferences on health disparities and was funding community projects. The Office of Minority Health and the Office for Civil Rights had developed national standards on providing culturally and linguistically appropriate health-care services.

16. President Bush's legislative proposal "No Child Left Behind" was aimed at reforming federal programmes for elementary and secondary education and at overcoming the many obstacles that prevented minority students from receiving high-quality education. Under that innovative scheme, the Federal Government would require states and districts to consider educational achievement gaps based on race, ethnicity and income status in evaluating schools' performance. The aim was primarily to encourage educators to focus their attention on the needs of students who were poorly served by the current education system. By ensuring that no child was left behind educationally, improvements could also be achieved in many other indicators of inequality, such as persistent discrimination in employment and lack of access to technology.

17. Mr. BOYD (United States of America), speaking on the question of the different communities' participation in positions of public authority, said that President Bush had been innovative in appointing for the first time in the country's history an African-American Secretary of State and an African-American to serve as National Security Adviser. He had also appointed other members of the African-American community and other minority groups to various ministerial posts or other senior positions in the Federal Government, administration and judiciary.

18. The composition of Congress reflected the same trend, with over 50 members belonging to the Black or Hispanic communities. At the state level, there were 10 times as many African-American legislators as there had been in 1970 and, in the southern region, there had been 290 African-American mayors in 1996 compared with only 3 in 1968. Between 1967 and 1993, African-Americans had won mayoral elections in 87 cities with populations of 50,000 or more, two thirds in cities in which their community represented the minority of the eligible voters.

19. Concerning residential discrimination, one of the purposes of the Fair Housing Act passed in 1968 had been to replace the "ghettos" by truly integrated living patterns. That statute had been amended in 1988 in a way that greatly expanded the Federal Government's enforcement powers. People alleging they were victims of discrimination could now lodge complaints with the Department of Housing and Urban Development and the Department of Justice, and the latter could in turn seek damages for victims in cases of individual or repeated discrimination. Also, states and local governments were encouraged to adopt laws with prohibitions and enforcement provisions similar to those of the Fair Housing Act, with financial support from the special federal assistance programme. Under its Fair Housing Initiatives Programme, the Department of Housing assisted non-profit organizations in funding projects and activities aimed at combating housing discrimination and increasing compliance with fair housing laws.

20. With regard to the use of the island of Vieques as a range facility, President Bush had announced on 15 June 2001 that the United States naval forces would leave the island in May 2003. None of the analyses carried out at the request of the Navy had indicated that its actions posed a health risk to the residents or the environment. Additional studies were being conducted by the Agency for Toxic Substances and Disease Registry and by the centres for disease control involved. The Government had settled claims amounting to approximately one million dollars to the family of the Navy employee killed at the Vieques range facility in April 1999.

21. Concerning the allegations that denial of the rights of the Alaskan Natives to their ancestral lands constituted racial discrimination, he pointed out that the United States had recognized the claims of the Alaskan Natives to lands in the state of Alaska under the Alaska Native Claims Settlement Act of 1971, which granted the native inhabitants compensation of nearly one billion dollars and restored some 45 million acres to them. Alaskan Natives were also entitled to apply for and obtain individual free ownership of up to some 160 acres of land which they had been using and occupying.

22. With regard to monitoring the application of the Convention at the local level, a working group established under Executive Order 13107 on the implementation of human rights treaties had been entrusted with the task of developing proposals and mechanisms for improving the monitoring of actions at the state level. In preparing the report now under consideration, the Government had requested local and state officials to provide the necessary information to determine the extent to which the Convention was being implemented at the local level. It had received many encouraging responses, which it would include in its next periodic report.

23. Concerning the continuation of the previous administration's anti-discrimination policies, President Bush and the Attorney General had announced several new key civil rights initiatives, including voting rights reform, the elimination of the practice of racial profiling, the enforcement of fair housing laws, the possibility of prosecuting those who exploited the vulnerability of new immigrants, and new measures in favour of persons with disabilities. The President had called on the Federal Government to work relentlessly to eliminate practices that contributed to deficiencies in

student achievement and that limited access to quality education and to support faith-based and community-based groups that served disadvantaged people.

24. The executive orders referred to in the State party's report remained in effect. They would be supplemented by a significant new executive order directing federal agencies to swiftly implement the decision rendered by the Supreme Court in a case that had dealt with people with disabilities who were forced to enter institutions in order to receive medical and social services. Local governments had been directed to provide alternatives that would allow the persons concerned to live close to their families and friends.

25. The United States did not share the Committee's view that the prohibition of all ideas based on racial superiority or hatred was compatible with the right to freedom of opinion and expression. Its reservations with regard to racist speech and private conduct were deeply rooted in American history and legal and political culture. The right to speak freely was virtually an article of faith and the First Amendment, which sharply curtailed the Government's ability to restrict or prohibit the expression or advocacy of certain ideas, no matter how distasteful, constituted a cornerstone of American democracy and applied to all media, including the Internet.

26. The Department of Justice had, however, brought criminal prosecutions against persons for harassing, intimidating and threatening others on the basis of race, including cases where such acts concerned rights to education or housing rights and the racist language was used in telephone calls, letters, leaflets and similar speech. Acts of intimidation involving cross burnings outside the homes of African-Americans had been successfully prosecuted. Such prosecutions were consistent with the principles of freedom of speech and association set forth in the First Amendment. Accordingly, citizens could speak but not threaten and could associate but not conspire to cause harm. Acts of racist speech and membership in racist organizations could not be proscribed unless they constituted threats, harassment or interference with the exercise of rights.

27. The Government was devoting significant efforts to combating the mistreatment of all immigrants, both documented and undocumented. The Equal Protection Clause applied to all persons, not just citizens. The Fair Labour Standards Act applied to all employees, regardless of their status, and seasonal workers who travelled to the United States were protected by the Agricultural Workers Protection Act. Also, emergency medical care and certain non-cash benefits were available to all persons without distinction. The Immigration and Nationality Act prohibited employment discrimination based on citizenship status and national origin and was enforced by the Office of Special Counsel for Immigration-Related Unfair Employment Practices. The Department of Education had taken steps to facilitate the schooling of migratory children, whose access to free public education was guaranteed.

28. Still on the subject of immigrants, the Government was endeavouring to combat violence and other reprehensible practices by law enforcement personnel, in particular border patrol officers, and immigration and naturalization service officers. Efforts were being made to evaluate the extent of racist conduct, such as racial profiling, by federal agencies. Mechanisms had been set up with the Mexican Government to ensure that all allegations of civil rights violations along the border received appropriate attention from the Department of Justice and to make crossing the border safer, including information to intending migrants on the risks involved and severe punishments for smugglers. The Trafficking Victims Protection Act, a new law enacted in October 2000, provided a comprehensive set of tools to combat the traffic in persons and provide assistance to victims. New regulations issued by the Department of Justice required law enforcement officers to treat victims of trafficking with dignity and provide them with access to medical care and other services. Victims were now offered new protections from deportation and two new visa classifications enabling them to remain in the United States had been created.

29. He stated that the use of the Internet for racist propaganda purposes was punishable under federal law and the Department of Justice prosecuted hate-motivated threats of violence. He cited two recent prosecutions where the defendants had been convicted of disseminating threatening comments via the Internet. Speech that did not amount to a threat, a direct incitement to violence or a

solicitation to illegal conduct could not be subject to government intervention by reason of the First Amendment to the United States Constitution.

30. Regarding access to justice and the guarantee of a fair trial, the Constitution and federal law forbade racial discrimination in the administration of justice. The multiracial composition of juries was in response to the need to ensure impartiality, as required by the Sixth Amendment to the Constitution. In several rulings, the Supreme Court had held that racial considerations could not be used in the selection of jurors. Also, judges and litigants were not permitted to appeal to racial prejudice or rely improperly on race in making arguments, which constituted grounds for declaring a mistrial. Those principles were scrupulously observed.

31. With regard to fairness in the justice system, persons who believed they had been convicted on the basis of insufficient evidence or had been subjected to a trial that was in violation of their constitutional rights could appeal to a federal court. Decisions in criminal cases, in particular Supreme Court rulings, had established the right of defendants to be represented by counsel, at no cost if necessary. Non-payment also extended to the services of experts required by the accused to prepare a defence and to fees. Under the Constitution, all counsel, in particular officially appointed counsel, had to meet a minimum threshold of competence and effectiveness, failing which defendants could appeal against their convictions.

32. In civil cases, indigent plaintiffs were appointed counsel free of charge at the federal level in lawsuits involving, *inter alia*, different aspects of family life, health care, social security benefits and consumer fraud. Almost half the beneficiaries were members of ethnic minorities. Many highly competent law firms provided pro bono defence services to some clients and advocacy groups were working to ensure that particular issues affecting minorities were litigated.

33. The United States had no plans to discontinue the use of mandatory minimum sentencing since the penalty structure was established by statute on the basis of extensive study and in consideration of the social interest.

34. In cases involving the murder of Blacks, the state and federal courts were committed to conducting full investigations, as in any murder case, regardless of the race or ethnicity of the victim, as required by law, and to prosecuting those responsible to the fullest extent of the law. For example, in Texas, three white men had been convicted in 1998 of the murder of an African-American, two of them receiving the death sentence. However, the United States did not have a centralized statistical system in that area.

35. The Federal Government did not currently plan to impose a moratorium on the death penalty, since none of the federal studies carried out had justified such a measure. The procedures in place in the states and at the federal level ensured that the application of the death penalty was not tainted by racial discrimination. The Governor of Illinois had, however, imposed such a moratorium in that state, pending the outcome of a review of existing procedures and the reliability of capital verdicts.

36. Regarding the statistical breakdown of the racial and ethnic population, he stated that, according to the 2000 census, just over 12 per cent of the population were African-American, just under 12 per cent were Hispanic and about 4 per cent were Asian-American. The population included 2.6 million American Indians and 4.1 million multi-race citizens, including persons who identified themselves as Native Americans.

37. With regard to the cases of police brutality against Rodney King and Amadou Diallo, he pointed out that the two police officers who had maltreated Mr. King in Los Angeles had been sentenced in 1993 to 30 months' imprisonment with no parole. The investigation into the death of Mr. Diallo had been closed in 2001 owing to insufficient evidence to establish criminal purpose beyond reasonable doubt. Some of the police officers had been indicted on manslaughter charges in a state court but acquitted by a jury of their peers since, even though the victim had been unarmed, no witness accounts could disprove the argument of self-defence put forward.

38. He stated that the United States currently had no intention of making a declaration under article 14 of the Convention.

39. He also stated that, following the publication of the report of an American non-governmental organization, ARIS, on hate crimes against Arab-Americans, the Department of Justice had just begun to review the 1998-2000 report updating the conclusions put forward in the 1996-1997 edition. He pointed out that the prosecution of misconduct involving deprivation of rights based on race was a priority of the Department. Federally collected data indicated that the level of such crimes had remained constant in recent years. The Department of Justice worked closely with other law enforcement agencies to pursue civil rights violations where sufficient evidence of their occurrence existed. The conviction rate for racial violence lawsuits was in excess of 90 per cent and many states had laws prohibiting such crimes and undertook special efforts to combat them. The Attorney General had pledged to take all reasonable and appropriate steps to protect civil rights against racist acts and to assist states and local authorities in such endeavours.

40. With regard to the convergence between federal law and state and local law, it should be noted that federal anti-discrimination laws applied nationally, even where state laws pre-dated them. Also, state and local measures frequently strengthened and supplemented federal efforts.

41. Regarding the precedence of acts of Congress over previously ratified treaties, United States law stipulated that treaties and acts of Congress stood on an equal footing, which meant that the most recent could override the previous one. However, the federal courts generally tried to construe acts of Congress or treaties in such a way that they did not overrule prior laws.

42. He confirmed that the scope of federal laws applicable to educational institutions in the area of bilingualism (para. 412 of the report) extended beyond that area. Under Title VI of the Civil Rights Act of 1964, establishments that benefited from federal financial assistance were prohibited from engaging in racial discrimination regardless of the programme or activity receiving the funds. The Department of Justice and the Department of Education ensured that that rule was strictly observed.

43. As to whether higher education establishments could engage in affirmative action efforts, the Bush administration's position was currently undergoing consideration. It would be elucidated with a view to preparation of the brief to be submitted shortly by the Department of Justice to the Supreme Court in the case of Adarand Constructors Inc. v. Peña, which raised issues of the same nature concerning affirmative action in favour of disadvantaged groups.

44. Concerning the status of disparate impact law, namely legislation concerning practices having discriminatory effect even in the absence of discriminatory intent, the prohibition of such practices as embodied in various federal civil rights provisions was consistent with article 2 (1) (c) of the Convention. The 1964 Civil Rights Act and its implementing regulations prohibited employers, including state and local governments and recipients of federal funds, from engaging in practices that could have an unjustifiable disparate impact on individuals of certain races. Those regulations remained in place, although the Supreme Court, in a recent decision (case of Alexander v. Sandoval), had held that there was no private right of action to enforce them. The regulations were subject to enforcement by the Department of Justice.

45. He explained that the denial of voting rights to residents of the District of Columbia, who were predominantly African-American, had a historical origin. Congress had established the District of Columbia in 1801 to ensure that, pursuant to the Constitution, the seat of the Federal Government would be subject exclusively to federal control. At that time, the population of the District had numbered approximately 8,000 and been predominantly white and, under the Constitution, had been excluded from representation in the national legislature and executive branch. However, in 1961, the Twenty-Third Amendment to the Constitution had authorized it to participate in the election of the President of the United States and, since 1970, it had been represented in the House of Representatives by a delegate vested with the same powers and privileges as representatives from the states. Residents of the District of Columbia elected a mayor and members of the city council.

46. Regarding the United States' position with respect to immigrants from communist countries, he said that federal law generally prohibited discrimination on the basis of national origin regardless of the nation of origin, whether communist or not. Also, the United States had over recent decades accepted many immigrants from communist and former communist countries.

47. In reply to the question concerning the percentage of gross domestic product allocated to combating racial discrimination, he estimated that more than 10,000 persons in federal, state and local administrations were engaged in enforcing civil rights laws, and the staffing of the Civil Rights Division of the Department of Justice had increased dramatically over the last few decades. Also, most major corporations had equal employment opportunity offices to ensure that their employees did not engage in unlawful discrimination.

48. With regard to discrimination in state and local government programmes that did not receive federal funds, he pointed out that, under the Constitution, states were required not to discriminate on the basis of race and that most state constitutions also contained such provisions. Federal prohibitions against discrimination applied not only to the use of federal funds but also to all activities of the entity receiving such funds.

49. In conclusion, he remarked that he had possibly not answered all the questions raised but his delegation was prepared to provide the Committee with further information in writing. The delegation looked forward to continuing the fruitful dialogue it had initiated with the Committee with the aim of advancing the elimination of racism in the United States of America and throughout the world.

50. Mr. ABOUL-NASR made two observations. First, he appreciated the reply given by the United States delegation to his observations concerning a recent report on crimes against Arab-Americans and looked forward to the outcome of the authorities' examination of that report. Secondly, with regard to secret evidence used in proceedings instituted against immigrants pursuant to the Anti-Terrorism Act of 1996, he considered that many Arab-Americans might feel unduly targeted. He would like to know whether those fears were well founded. He also wished to see the State Department's list of 30 terrorist organizations since, according to certain information, one half of them were Arab organizations. He would like to verify that information.

51. Mr. RECHETOV appreciated the wealth of information provided by the United States delegation in its answers, especially in the legal area. Regarding the treaties concluded by the United States Government with Indian tribes, the delegation had furnished the Committee with useful information on the status of those treaties and the legal system in force in the United States but had not addressed the main issue, namely the effective exercise by the indigenous populations of the rights provided for in those treaties. He would have liked to know, for example, whether the compensation granted had been sufficient to offset the Indians' loss of some of their rights over their traditional territories, in particular hunting and fishing rights. It appeared that certain Indian lands were used for storing radioactive waste. The delegation had neither confirmed nor refuted that information.

52. Concerning the incorporation of the provisions of the Convention into domestic law, he was surprised to hear that decisions of the Supreme Court had not adversely affected the application of the Convention. He did not agree with that assertion, especially in regard to positive discrimination or affirmative action. He understood that the delegation had confirmed that the United States authorities were continuing to implement positive discrimination measures, which would or would not be adopted by the different states. He did not consider that sufficient in the light of those provisions of the Convention under which every State party was required to take the necessary steps to ensure the application of the Convention throughout its territory.

53. He welcomed the Bush administration's intention to continue to combat racial discrimination, which disadvantaged the members of racial or ethnic minorities in a number of areas, including access to housing, public services and education. He acknowledged its commitment to eliminating racial disparities within the criminal justice system at both the federal and the state levels.

54. Regarding capital punishment, he pointed out that the Committee was interested in the question of the death penalty not only from a racial discrimination viewpoint but also from an ethical viewpoint. He also considered that reservations made by States parties when acceding to the Convention tended to hamper dialogue between the State party and the Committee. He therefore felt it desirable for the United States to withdraw its reservation to article 4 of the Convention, as had been done by other countries, such as France and the United Kingdom of Great Britain and Northern Ireland. Even if the United States Supreme Court deemed cross burning to be a form of expression compatible with the First Amendment, which governed freedom of expression, he felt that such acts were not an expression of racial harmony and created a climate of tension within society.

55. Mr. THORNBERRY referred to the question of the relationship between the Federal Government and the native populations, which, he believed, was governed by treaties some of whose provisions were contrary to those of the Convention and could be unilaterally rescinded by Congress. What was the position regarding the principle of equality of arms? He again questioned the treaties' origin in the light of the fact that they conflicted with the right of indigenous peoples to self-determination. Given that the United States recognized that right as well as the right of minorities to participate in decisions affecting them, the country could be expected to reform its legal system, as countries with comparable systems had done before it.

56. Mr. de GOUTTES noted the frankness with which the United States delegation had answered the Committee's questions, including by indicating those measures which the United States Government refused to take, namely withdrawing its reservations, introducing a moratorium on the abolition of capital punishment, prohibiting racist speech that did not amount to a threat and making a declaration under article 14 of the Convention. On the last point, he regretted that the United States did not wish to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of the State party's violation of any of the rights set forth in the Convention. In making the declaration, States parties exposed themselves to complaints but thereby demonstrated their commitment to implementing the Convention. He pointed out that the World Conference against Racism was likely to urge States to make such a declaration and asked what the attitude of the United States delegation would be to that appeal if it were made.

57. Mr. YUTZIS said that he was concerned by the fact that one and a half million African-Americans were deprived of their voting rights for penal reasons. He asked what measures were being taken to end the disparities between Blacks and Whites in that respect. He was also concerned by the operation of a practice of double standards that seemed to influence the decisions of the Supreme Court and created unequal rights among the different ethnic and racial groups. Were steps being taken to overcome that situation and, in particular, to require the states to implement article 2 (1) (c) of the Convention?

58. Mr. DIACONU regretted that the United States had not withdrawn its reservations to article 4 of the Convention, which, in his opinion, detracted from the country's commitment. In no circumstances should laws enacted at the local government or state level undermine the minimum standards adopted by the Federal Government under the Convention. Similarly, the Federal Government could not enact laws to amend or revoke all or part of the Convention, even by virtue of the fact that they were more recent than the Convention, owing to the pacta sunt servanda rule, since international law did not apply the lex posteriori principle. On the contrary, it was subsequent laws that had to conform to international treaties and conventions.

59. Mr. SHAHI noted from paragraph 353 of the report that the highest unemployment rate was found among Native Americans living on reservations, in some cases over 50 per cent (1999 figures). He pointed out that any policy of affirmative action in the country pursued by the Bush administration should not neglect that part of the population, which was in most need of it. In that connection, he drew the delegation's attention to General Recommendation XXIII of the Committee relating to the rights of indigenous peoples.

60. He wished to know whether the use of "secret evidence" in proceedings instituted against immigrants applied exclusively to Arab-Americans and Muslim Americans, in which case it would constitute racial discrimination, or whether it involved other minorities.

61. Mr. CRANER (United States of America), responding to the concerns voiced by Mr. Aboul-Nasr and Mr. Shahi, assured the members of the Committee that the Bush administration in no circumstances pursued a discriminatory policy against any particular ethnic group since the law guaranteed equal treatment to all citizens. With regard to the list of 30 organizations drawn up on connection with the fight against terrorism, he said that he did not know the percentage of organizations headed by Arab-Americans contained in the list but would provide the Committee with further information on the subject. However, combating terrorism was an end in itself regardless of the nationality of the persons engaging in such activities.

62. He pointed out that he was unable in the present circumstances to answer the question raised by Mr. de Gouttes as to what the United States' response would be to a possible appeal, at the time of the World Conference against Racism, advocating recognition of the Committee's competence to receive and consider communications under article 14 of the Convention. That issue was pending and should be dealt with the following week in the course of the preparatory process for the World Conference against Racism.

63. With regard to the traffic in persons, he pointed out that the relevant legislation, enacted in October 2000, had been unanimously passed by both houses of the United States parliament. In his view, trafficking in persons aroused considerable concern among the American population irrespective of the persons affected. He remarked that the Bush administration was firmly resolved to putting an end to that practice in cooperation with all countries. For that purpose, an interinstitutional working group had been established and an office responsible for studying the international aspects of the traffic in persons had been set up within the Department of Justice, while the State Department was dealing with the national aspects of the issue.

64. Mr. BOYD (United States of America) said that the Bush administration had undertaken as a priority to reform the electoral system so that no one would be deprived of voting rights in the future. He pointed out in that connection that the Attorney General had increased by 22 per cent the budget allocated to the Civil Rights Division's voting section with a view to providing it with increased staffing and resources to conduct inquiries and develop voting procedures and good practices applicable not only in Florida but also in the rest of the country to ensure that the irregularities that had arisen during the 2000 elections did not recur in the United States of America.

65. With regard to the disproportionate number of Blacks deprived of the right to vote owing to their incarceration, he was uncertain whether the question raised by Mr. Yutzis referred to the fact that prisoners in some United States jurisdictions were permanently deprived of their civic rights, even after serving their sentence. He acknowledged that the issue was serious and assured the members of the Committee that it would be given very serious consideration.

66. He understood that Mr. Yutzis was referring to Supreme Court decisions concerning the interpretation of the Voting Rights Act that prohibited redistricting in such a way as to weaken the minority vote. He pointed out that, under that law, the Civil Rights Division was totally prohibited from basing its actions on ethnic criteria when redrawing electoral districts.

67. He said that he had noted the Committee's concerns regarding capital punishment in the United States, which was the subject of intense debate among the population.

68. Mr. RECHETOV (Country Rapporteur) expressed the hope that the United States would shortly subscribe to the international instrument provided for in article 14 of the Convention, which, in his view, conformed to the spirit and letter of the First Amendment to the United States Constitution.

69. The CHAIRMAN said that the Committee had concluded the first part of its oral consideration of the initial report and second and third periodic reports of the United States of America.

70. The delegation of the United States of America withdrew.

The meeting rose at 6.10 p.m.