



# International Covenant on Civil and Political Rights

Distr.: General  
8 November 2006  
English  
Original: French

---

## HUMAN RIGHTS COMMITTEE

Eighty-seventh session

### SUMMARY RECORD (PARTIAL)\* OF THE 2381st MEETING

Held at the Palais Wilson, Geneva  
on Tuesday 18 July 2006 at 3 p.m.

Chairperson: Ms. CHANET

## CONTENTS

### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (*continued*)

Second and third periodic reports of the United States of America (*continued*)

---

\* No summary record was prepared for the rest of the meeting.

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

*The meeting was called to order at 3 p.m.*

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (*continued*)

Second and third periodic reports of the United States of America (*continued*)  
(CCPR/C/USA/3; CCPR/C/USA/Q/3)

1. *At the invitation of the Chairperson, the members of the delegation of the United States of America resumed their places at the Committee table.*
2. The CHAIRPERSON invited the delegation of the United States to reply to the supplementary oral questions posed by the members of the Committee.
3. Mr. TIMOFEYEV (United States of America) said that the protection of unaccompanied foreign minors entering the territory of the United States had been noticeably improved especially with regard to access to counsel and the appointment of a Government legal representative in immigration proceedings. The Government had paid greater attention to the problems posed by the situation of those young persons; in particular, the transfer of the protection and placement of unaccompanied minors to the Office of Refugee Resettlement of the Department of Health and Human Services had taken effect in March 2003. The Federal Administration and Congress had recently decided an appreciable increase in the financing of programmes intended for such minors. In addition, new standards for detention centres had been instituted in March 1998, calling for harmonization of penitentiary guidelines, including those applicable to holding centres. The programme set up in that area had yielded good results and ought to make it possible to ensure equal treatment and access to counsel for all immigrants and asylum seekers. In April 2000 the Department of Justice had set up a programme to improve the representation of immigrants against whom a deportation measure had been issued. Non-governmental organizations (NGOs) organized campaigns aimed at helping aliens in detention to have better knowledge of their rights.
4. Members of the Committee had asked whether the criterion applied by the authorities in respect of non-refoulement (i.e., whether it was highly probable that the person would be subjected to torture) was not purely theoretical. The answer was no. The evaluation carried out in the light of the provisions of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment consisted in a painstaking analysis of the person's file to make sure that he did not run any risk of torture in the country to which he was to be returned. Since the passage of the law giving effect to article 3 of the Covenant, more than 3000 persons had benefited from a protection measure based on the principle of non-refoulement.
5. A member of the Committee had pointed out that money, even if considerable sums were involved, would not suffice to overcome the effects of Hurricane Katrina. The United States delegation fully subscribed to that view but felt it must emphasize that programmes had been set up to see to it that the hurricane victims managed to resettle in a suitable place and rebuild their lives and that without money those programmes would remain a dead letter.
6. With regard to the protection of the rights of aliens who were in the territory of the United States illegally, the Supreme Court had been very clear: constitutional procedural guarantees applied to all persons resident within the territory of the

United States, including illegal aliens, who were thus treated with dignity and respect. Notwithstanding, they did not have the right to work. However, within the framework of the overall reform of the provisions applicable to immigrants, President Bush had called for the establishment of a temporary programme under which work permits could be offered to aliens resident in the United States.

7. Mr. HARRIS (United States of America) said he wished to go back to the questions relating to the interpretation of article 2, paragraph 1, of the Covenant. If one examined the practice of States parties to the Covenant, he said, one found that, while some of them had perhaps informed the Human Rights Committee that they intended to apply the Covenant in connection with the peacekeeping activities in which they participated outside their borders, no State involved in an international armed conflict, and in particular none of those which had taken part in first and second Gulf wars, had ever notified it of any derogation under the provisions of article 4 of the Covenant. The two cases brought before the International Court of Justice that had been mentioned by the Committee did not concern the United States. While it was true that the decisions handed down by the Court raised important questions from the standpoint of precedent and the interpretation of texts, still it must be noted that in neither of the two judgements did the Court proceed to interpret the provisions of article 2 of the Covenant. Be that as it might, the Government of the United States of America still thought that the Covenant must be interpreted on the basis of the simple and ordinary meaning of its text, and felt that the reading of the preparatory work of the Covenant corroborated its interpretation of the provisions of article 2. None of the States that had taken part in the negotiations had considered that the Covenant should be applied outside its territory to nationals of a third country or wished to set up a monitoring mechanism. One might, to be sure, conceive that a reasonable State might wish, for political reasons, to see such a mechanism established, but in that case it would be at leisure to submit a proposal along those lines to the Conference of States Parties, which would consider it and then, depending on the result, possibly adopt an amendment to the instrument. The United States, generally speaking, deemed such a procedure as constituting the best way to develop the related law.

8. A question had been asked concerning the political status of the inhabitants of the District of Columbia. That status was the subject of a heated debate in the United States, and the authorities had presented their view to the Inter-American Commission on Human Rights, which had been seized of the matter. The delegation would send the Committee a copy of the document setting forth that view.

9. As for the degree to which the law depriving persons convicted of grave crimes of the right to vote was compatible with the Covenant, the question that arose was whether the provisions of that law established an unreasonable restriction within the meaning of the Covenant: that was not the case. One might wonder, obviously, about the advantages of having a law of that type, and the United States authorities would be interested to hear the opinion of the Committee on that point. There could be no question, however, of mixing obligations under the Covenant and matters relating to State jurisprudence and policy.

10. Apropos of the way in which high officials of the United States viewed international law, he said that Secretary of State Condoleezza Rice had recently reaffirmed before the American Society of International Law that the United States respected its international commitments and that in participating in an international

system founded on the rule of law, it was making the world not only better but safer for America. He hoped that the seriousness of the replies to the various questions had convinced the Committee of the importance which the State party attached to its international commitments.

11. Mr. KIM (United States of America), replying to a question on institutional responsibilities in the area of protection of human rights, said that such protection was a mission shared by the three branches of the Government: legislative, executive and judicial. In his inaugural address, moreover, President Bush had underscored the importance to the nation of each and every individual, who must be viewed as a unique and irreplaceable being. Every action by the Department of Justice in relation to human rights was guided by that idea.

12. With regard to racial profiling and the statistics concerning police violence against certain communities, the current administration, he said, and in particular the Department of Justice, was firmly committed to putting an end to the problem within the framework of a coherent overall policy. The abuses committed by law-enforcement officers were a matter of concern to both Federal and state authorities, who were following the question very closely and taking the required steps. Detailed information had been provided to the Committee, and he would simply like to recall that, for a little over five years, the action carried out by the Civil Rights Division to ensure the integrity of law-enforcement officers had resulted in a sizeable increase (30 per cent) in the number of sanctions.

13. As far as the application of article 25 (b) of the Covenant was concerned, he recalled that the United States was a democracy and that, in consequence, it considered that every person having the right to vote should exercise it, within the framework of free and fair elections, and that every ballot must count. Furthermore, a number of proposals to improve the situation were under consideration. In a country made up of 50 states, the multitude of elections at all levels enabled the Federal authorities to draw lessons from the different electoral procedures, the results of which were carefully analysed by the competent bodies. Two Federal electoral commissions monitored compliance with the law in that area. In response to a question asked by a member of the Committee as to whether the law concerning the right to vote would be renewed, he said that it would. The Department of Justice wished to have the law renewed and Congress had stated its agreement.

14. The question of the use of Taser guns by law-enforcement officers was a delicate one that was currently under consideration at all levels of the State. The need to use such weapons was currently being evaluated. Some studies showed that they inflicted less serious wounds than classic guns while others concluded the opposite. The Department of Justice was continuing its consideration of the matter rigorously, but also with an open mind, with a view to striking an appropriate balance among the different solutions.

15. In the majority of cases, prosecutions for abusive use of stun guns had originated with the Federal Government, not because the states had failed to fulfil their duties but because it had been the first to be informed. Should the Department of Justice find that there was deliberate inertia on the part of a state with regard to violations committed in the territory under its jurisdiction, it would order the opening of an investigation to assess the degree to which the behaviour of the law-enforcement officers of the state in question was in keeping with the rules laid down by the Constitution and Federal law.

16. The examples of acts committed by law-enforcement officers given in paragraph 131 of the report were aimed not at illustrating actual violations of the Fourth Amendment but at showing what types of sanctions were incurred for faults committed by the public administration. A fault was never constituted by cruel inhuman or degrading treatment within the meaning of article 7 of the Covenant.

17. Concern had been expressed over the high prison population in the United States. The Committee could rest assured that no person was incarcerated in the United States without having first had the benefit of all the guarantees of regular procedure. Any conviction arising in a proceeding in which any of those guarantees had not been respected was overturned. Moreover, for several years the United States had been showing the lowest violent crime rates ever recorded since statistics had begun to be kept.

18. On the question of maximum security prisons he recalled that such prisons represented only a very small percentage of the total number of penitentiary establishments in the United States. Furthermore, from a purely economic standpoint, incarceration in a prison of that type was extremely costly. It was thus reserved solely for convicts who represented a serious danger to themselves their fellow inmates or the guards. In those prisons as in others, every effort was made to guarantee detainees humane conditions of detention and accord them the guarantees laid down in the Constitution as well as in the Covenant. The Department of Justice make sure that all penitentiary institutions were in conformity with constitutional standards.

19. As for the Prison Rape Elimination Act and its effects, the process of data collection and compilation was under way; consequently, it would still take some time before the initial findings could be established. Under the Act, a National Prison Rape Elimination Commission had been created. It was charged with carrying out an exhaustive study of the multiple implications of rape committed in prison and drafting national standards to combat that practice.

20. The concerns expressed regarding the monitoring of the health and safety of women in prisons were shared by the Government. Guaranteeing humane conditions of detention in accordance with constitutional and legislative standards was a national objective. On more than one occasion the Department of Justice had instituted public prosecutions to defend the rights of prisoners. Prisoners themselves could institute civil proceedings, in particular with a view to obtaining damages.

21. Minors serving a sentence of life imprisonment without the possibility of release represented only a tiny percentage of the number of delinquent minors who had received prison sentences, which itself was very small. Like all persons imprisoned in the United States, juvenile offenders sentenced to imprisonment, including without the possibility of any reduction of the sentence, had been imprisoned following a trial in which the guarantees of regular procedure had been respected.

22. On the question of sexual orientation, which the delegation had pointed out was not included among the possible causes of discrimination mentioned in the Covenant, it must be stressed that persons could not under any circumstances be treated differently because of their sexual orientation. The protection of all individuals, irrespective of their personal situation, was an absolute principle. The

unremitting struggle against trafficking in human beings clearly illustrated that fact, inasmuch as the victims of such traffic were primarily persons belonging to minorities, women and undocumented aliens. In addition, 46 states and the District of Columbia applied laws prohibiting acts motivated by hatred against a group. Laws prohibiting job discrimination based on sexual orientation also existed in many states.

23. With respect to the Government's decision not to provide reimbursement for abortion, a member of the Committee had asked whether the Government had taken into consideration the warnings in various studies against the health risks of clandestine abortion and the policy of abstinence, and whether it had taken any measures. The public debate around abortion and the policy of abstinence, which was not something new, was ongoing, and the Government would continue to make its decisions on such matters in consultation with the citizens and through their elected representatives.

24. The interpretation given by the International Labour Organization and the decision of the Supreme Court in the case of *Hoffman Plastic Compounds Inc. v. National Labor Relations Board* had been mentioned. Supreme Court decisions were often discussed and sometimes contested by international organizations. Nevertheless, the Government of the United States was bound by those decisions, whether it approved of them or not. In the case in question, judging by the role the National Labor Relations Board continued to play in favour of protection of workers' rights, including the right to take part in union activities, it did not seem that the Supreme Court decision had weakened the law. Judicial recourse also existed for undocumented workers illegally dismissed because of their participation in union activities.

25. Regarding the allegations that police officers had prevented Hurricane Katrina victims from crossing the Greater New Orleans Bridge, the investigation opened by the office of the Attorney-General of Louisiana was ongoing. The report on the investigation would be examined by the Civil Rights Division, which would determine whether a further investigation was needed and whether there had been any violation of Federal laws, in which case the corresponding procedure would be applied.

26. As far as the follow-up of prosecutions in cases of faults committed by State employees in the discharge of their duties was concerned, it was worth noting that the Civil Rights Division won approximately 85 per cent of the actions it filed and that the penalties imposed on those found guilty could range from several months to several years of imprisonment.

27. On the many questions dealing with the death penalty it had been answered that the Covenant did not prohibit States parties from applying that penalty. However, the application of the death penalty in the case of mentally ill persons required additional clarification. The *Atkins v. Virginia* case had created a precedent clearly establishing that capital punishment was not applicable to mentally retarded persons. It was up to the judges to establish, on the basis of factual data, the distinction between mental illness and mental retardation.

28. As for the bill aimed at extending the applicability of capital punishment to sexual crimes perpetrated on children, one could only reply that should that bill become law, it would be up to the courts in which it was invoked to rule on its

appropriateness. It had already happened that the Supreme Court had overturned death sentences on the grounds that the death penalty should not have been pronounced for the crime of which the defendant had been found guilty.

29. The CHAIRPERSON said she was pleased that the State party, 11 years after submitting its first report, had resumed the dialogue with the Committee. She congratulated the NGOs on their professionalism and thanked the delegation for its openness towards them. The Committee greatly appreciated the quality and seriousness of the report submitted to it. As acknowledged by the delegation, the Covenant was the most important international instrument in the field of protection of human rights. Deriving its mandate directly from the Covenant, the Committee, as a monitoring body, was charged with evaluating States parties' performance of their obligations. For that purpose, as indicated in article 40, States parties were required to submit an initial report to the Committee within one year of the entry into force of the Covenant and thereafter whenever the Committee so requested. The Committee was further empowered to give its opinion on reservations formulated by States parties, as recognized by the International Law Commission.

30. The Committee had encountered a number of obstacles in connection with the current consideration of the second and third periodic reports of the United States. It was especially regrettable that by maintaining its position on the territorial application of the Covenant, against the interpretation of article 2 of the Covenant given by the Committee and confirmed by the International Court of Justice, the State party had limited the debate on questions Nos. 5 to 9. Furthermore, the Committee considered that the State party, by multiplying its reservations to the provisions of the Covenant and interpreting the scope of the Committee's competence restrictively, was not presenting the proper example to other States, while expecting them to apply the Covenant as broadly as possible. It must be recognized, however, that the delegation had shown itself flexible in agreeing to complete its written replies to permit the consideration of the report to be concluded, thus complying with the customary practice of the Committee. Nonetheless, some questions had gone unanswered and additional information could be communicated by the delegation and would be taken into consideration by the Committee in its concluding observations.

31. Mr. WAXMAN (United States of America), speaking on behalf of the entire delegation, thanked the Committee for the interest it had shown in the consideration of the report of the United States. Additional information would be communicated to the Committee in response to the questions it had not been possible to deal with during the debate. The United States, while proud of its commitment to civil and political rights within its territory and abroad, was fully aware of the need, both in its own eyes and in those of the world, to show itself as measuring up to the standards in that sphere. The current dialogue, through the points of both agreement and disagreement it had revealed, would help the Government in its efforts to guarantee respect for human dignity, the inalienable character of which had been forcefully recalled by President Bush.

32. *The delegation of the United States withdrew.*

*The discussion covered in the summary record ended at 3.55 p.m.*