

# **THE APPLICATION OF THE UN CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION: CHALLENGES AHEAD**

**By**

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### **SELECTED SOURCES**

- International Convention on the Elimination of Racial Discrimination, adopted by the UN General Assembly on 21 December 1965, UNTS, vol. 660, p. 195.
- Annual Reports of the Committee on the Elimination of Racial Discrimination to the UN General Assembly, 2000-2008, UN doc. A/55/18 (2000), A/56/18 (2001), A/57/18 (2002), A/58/18 (2003), A/59/18 (2004), A/60/18 (2005), A/61/18 (2006), A/62/18 (2007), A/63/18 (2008).
- General recommendation XXV on gender-related dimensions of racial discrimination, in UN doc. A/55/18.
- General recommendation XXVII on discrimination against Roma, in UN doc. A/55/18.
- General recommendation XXIX on descent-based discrimination, in UN doc. A/57/18.
- General recommendation XXX on discrimination against non-citizens, in UN doc. A/59/18.
- General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, in UN doc. A/60/18.
- Views of the Committee on the Elimination of Racial Discrimination on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination and its Effectiveness, UN doc. E/CN.4/2004/WG.21/10/Add.1

### **SELECTED BIBLIOGRAPHY**

- Banton M., *International Action Against Racial Discrimination*, Oxford, Clarendon Press, 1996.
- Bidault M., *Le Comité pour l'élimination de la discrimination raciale. Analyse d'une dynamique institutionnelle*, Paris, Montchrestien, 1997.
- De Gouttes R., Le rôle du Comité des Nations Unies pour l'élimination de la discrimination raciale, 12 *Revue trimestrielle des droits de l'homme* (2001), pp. 567-584.
- Dhommeaux J., Le Comité pour l'élimination de la discrimination raciale : 15 ans de jurisprudence, *L'Europe des libertés* (November 2003), pp. 3-13.
- Keane D., Descent-based Discrimination in International Law: A Legal History, 11 *International Journal on Minority and Group Rights* (2005), pp. 93-116.
- Lerner N., *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Alphen aan den Rijn, Sijthoff & Noordhoff, 1980.

- Schwelb E., The International Convention on the Elimination of Racial Discrimination, 15 *International and Comparative Law Quarterly* (1966), pp. 996 *seq.*
- Sicilianos L.-A., Les potentialités de la Convention pour l'élimination de la discrimination raciale. – À propos de la Recommandation générale concernant la discrimination fondée sur l'ascendance, in *Libertés, justice, tolérance. Mélanges en hommage au Doyen Gérard Cohen-Jonathan*, Bruxelles, Bruylant, 2004, vol. II, pp. 1385-1397.
- Sicilianos L.-A., L'actualité et les potentialités de la Convention sur l'élimination de la discrimination raciale. À propos du 40<sup>e</sup> anniversaire de son adoption, 16 *Revue trimestrielle des droits de l'homme* (2005), pp. 869-921.
- Thornberry P., *The International Convention on the Elimination of Racial Discrimination*, Oxford University Press (forthcoming).
- Valencia Rodriguez L., The International Convention on the Elimination of All Forms of Racial Discrimination, *Manual on Human Rights Reporting*, UN, Geneva, 1997, UN doc. HR/PUB/91/1, Rev. 1, pp. 267-304.