Conclusions: A Decade After

As pointed out in the Introduction to this edition, a decade is not enough to evaluate the place of a multilateral convention in the history of international legislation. It is sufficient, however, to permit judgment of its potential role, and of the effectiveness of its implementation machinery in the endeavor to achieve the instrument’s aims. On the basis of such an assumption, it is hoped that the contents of this book, especially the chapters incorporated into this second revised edition, will permit the reader interested in contemporary international legal problems to reach conclusions on: the work of the Committee on the Elimination of Racial Discrimination; the problems it has had to deal with and the approach of its members to those problems; and the impact of the Convention on the developments in domestic and international legislation with regard to racial discrimination.

It is the conviction of the author that those conclusions will be on the whole positive, despite some reservations. The Convention has been ratified by two-thirds of the international community. Many States have incorporated its provisions into their legislation, and judges have applied its principles. The implementation machinery has worked effectively as far as the reporting system is concerned. The Committee has scrutinized the implementation of the Convention in a thorough way, to the point that sometimes its detailed examination has even been called inquisitorial. Some of the decisions taken by CERD have been criticized, especially those in which political elements have been present; but, on the whole, its role has generally been seen as an effective contribution to the struggle against racial discrimination.

As indicated, the reporting system under Article 9 is the only implementation procedure established in the Convention to become effective. We summarized in Part 4 the difficulties encountered by the Committee in its attempts to ensure a smooth operation of the Convention in this respect, and we commented on the steps it took to that end. We have tried to bring to the reader’s attention the significance of the quite impressive body of information on racial discrimination produced by the reporting system, despite some shortcomings and misinterpretations. While some States have been remiss in the discharge of their duties, many have submitted reports impressive in their comprehensiveness of form and content. A dialogue between the Committee and States Parties has been established and governments seem to consider it important to take into consideration comments made by the experts of the Committee during the discussion of the reports, and to show a positive record of action against racial discrimination.
There is, in this respect, an obvious difference between States with a well-established legislative tradition and with long-standing normal institutions, on the one hand, and young States without such experience, confronting obstacles that prevent the rule of law from prevailing, on the other. But beyond such a difference, a desire to meet the standards and guidelines established by the Committee has generally been evident, and instances of disregard for the opinion of its members have been few.

This does not mean, of course, that the factual situation in the world is satisfactory. A comprehensive report that follows the guidelines determined by the Committee can be presented by States practicing racial discrimination in an open way. But the efforts made by States at least to give the appearance of respecting and implementing the Convention are undoubtedly important, from an educational as well as from a political angle. And in this respect it seems beyond doubt that the Convention and the ten years of CERD’s work have stimulated the improvement of legislation and the adoption of steps implying progress in the elimination of racism.

The matter has, naturally, to be seen in the context of the general picture. The Committee only formulated suggestions and general recommendations, and did not relate to specific situations in particular States Parties. There have been no inter-State complaints, although the necessary rules of procedure were drafted by the Committee. While at the Third Committee some States criticized other States when the reports from CERD were discussed, no formal communication intended to put into operation Articles 11 to 13 of the Convention was submitted.

Article 14 has not yet come into effect, although the declaration of only a few more States is still missing. We have seen the resistance, in the Committee and in the Third Committee, to the proposals intended to make that optional article operational. Obviously, fear of the new dimensions which could be added to the struggle against racism and racial discrimination, by communications from individuals and non-governmental organizations, has played a role here. Some of the harshest remarks made in the Committee were related to this subject. There is room for hope that Article 14 might come into force in the near future.

The practice with regard to Trust and Non-Self-Governing Territories, under Article 15 of the Convention, has been disappointing, despite the efforts of the Committee to discharge its functions properly. We have described the difficulties that prevented the Committee from performing a more important role in this regard.

One of the most controversial aspects of the work of the Committee was its decisions regarding alleged racial discrimination in territories militarily