Martin Aranguren (1981, Mendoza-Argentina) studied sociology at Cuyo University (Argentina), political science at Institut d'Etudes Politiques de Lille (France) and philosophy at Leipzig University (Germany). He completed a Master's in social sciences at Ecole des Hautes Etudes en Sciences Sociales, Paris (France) and the Research Training Programme of the Center for Studies in Social Sciences, Calcutta (India). Since 2008 he develops a PhD dissertation for Ecole des Hautes Etudes en Sciences Sociales and Orange Labs. He has conducted research on the organization of social encounters, the logic of collective action in Latin America and France and the development of transnational advocacy campaigns.

Introduction

Under what conditions does international advocacy contribute to the establishment of new human rights? In this paper I explore the question by examining the advocacy experience of the Dalits\(^1\), India's “Untouchables”, at the United Nations (UN). For decades, Dalit advocates, sometimes in alliance with International Non Governmental Organizations (INGOs), have been mobilizing information on the realities of the “Untouchables” at various UN venues to present India as a violator of their human rights. However, Dalit advocacy started finding echo at the UN only in the second half of the nineties, triggering a process that led human rights bodies to recognize caste discrimination as a violation of international law by the beginning of the following decade.

This article examines the conditions that allowed the Dalits to make a difference at the UN. Available frameworks on international advocacy tend to center analysis either on transnational campaigns of “information politics” led by networks of NGOs\(^ii\) or on the marketing strategies that Southern domestic organizations must deploy to gain the attention and support of their Northern, resourceful counterparts\(^iii\). For all their utility, these approaches pay less attention to what turns out to be the key factor in the explanation of the Dalits' success in carving out a place for caste discrimination in international human rights legislation. I attempt to show in this article that this achievement cannot be accounted for unless we shift the analytical focus from transnational NGO campaigns or domestic organizations' marketing strategies to the interactions between advocacy coalitions\(^iv\), human rights body experts and state delegates in UN institutions and meetings.

First of all, it is worth recalling the milestones of this process of rights recognition. In 1996 the Committee for the Elimination of Racial Discrimination (CERD), a human rights monitoring body, concluded that the situation of the Dalits was covered by the International
Convention for the Elimination of Racial Discrimination (ICERD). Starting in 2000 the Sub-Commission for the Promotion and Protection of Human Rights, an organ subsidiary to the former Human Rights Commission, appointed a series of studies on the issue of descent-based discrimination, the legal term invoked to cover caste abuses. Finally, in 2002 the CERD issued a resolution fixing the interpretation of the notion of descent in the ICERD, whereby caste discrimination was explicitly established as an instance of descent-based discrimination.

Throughout the process, Dalit advocacy has been as constant as India's opposition. At times the responses of UN bodies were advantageous to the Dalits, at times to the Indian government. In examining the factors that account for this variation, a number of puzzles arise that the existing literature has left unaddressed. First, the “political opportunity” for pleading for the recognition of caste as a source of human rights grievances opened up in 1996, with CERD's observation that the situation of the Indian Dalits was covered by the ICERD. Why this "sudden" change in policy? The innovation has been depicted as a long awaited response of the UN body to years of unyielding Dalit advocacy. Close examination of the episode shows however that although advocacy played a role, the UN organ's innovation was not a reflection of Dalits' demands - quite the contrary. Consequently, the change cannot be explained by reference to Dalit pressure only. The explanation I bring forward makes this change in policy look less sudden and punctual than it may appear, by regarding it as an outcome of the interaction between the advocates and the body experts from the standpoint of their respective agendas. As an upshot, the organizational conditions of Dalit advocacy appear to have less weight in explaining human rights innovation than other studies have suggested.

Second, building on this opportunity a new coalition of Indian and international NGOs launched an aggressive campaign to discuss caste discrimination at the 2002 UN World Conference Against Racism in Durban, South Africa. Despite propitious organizational conditions facilitated by prestigious INGOs, which included material resources, media visibility and symbolic legitimacy in intergovernmental arenas, the Dalit coalition failed in the preparatory process and failed again at the multilateral conference in Durban. Activists and later on scholars explained the fiasco by reference to India's diplomacy or the coalition's incompetence. However, as they stand both versions appear to be incomplete. The explanation I suggest looks closer to the interactions between the Dalit coalition and state delegates, on the one hand, and other advocacy coalitions, on the other. This approach has the virtue of circumscribing the power of India as an opponent, while pointing to other actors that equally account for the Dalit coalition's defeat.
Third, in parallel to the “Durban process”, the Dalits supported by their INGO allies made repeated formal interventions (and sustained informal lobby) at the Sub-commission for the Promotion and Protection of Human Rights. As a result, the organ decided a series of regional studies on descent-based discrimination that culminated in the appointment of a Special Rapporteur to conduct a world-wide consultation on the issue. It is important to note, however, that in spite of remarkable responsiveness in this regard, the Sub-commission crucially failed to support the Dalit's demand to recommend caste discrimination for discussion at the Durban conference. This puzzling fact does not seem to have been acknowledged by previous studies of the case. In order to clarify it, I look at the interactions between advocates and experts in the specific context of this UN body. As a result, the seeming ambiguity is replaced by a deep duality in the dynamics of human rights negotiations.

The argument

I argue that these puzzles can be solved by looking at the interactions between advocates, experts and delegates on the basis of two postulates. The first one draws on Clifford Bob's observation that asymmetric patron-client relationships characterize the exchanges between weak domestic and resourceful transnational NGOs. I extend this principle to the UN level, and postulate that the patron-client ideal type effectively describes the relationship between advocacy coalitions and body experts or state delegates. The second postulate rehabilitates a controversial distinction by casting it in new terms. I postulate that human rights activities at the UN orient alternatively to professionalism and to power politics. This does not mean that experts virtuously respect professionalism while delegates mechanically follow power politics. Despite obvious propensities, theoretically either actor may orient to either logic, since it is the context of interaction and not the identity of the actors that accounts for the rules of the game being played. Determining when professionalism or power politics will prevail is therefore an empirical matter.

With the patron-client ideal type and the distinction between professionalism and power politics in mind, I can now anticipate the solutions I suggest for the above puzzles. First, the 1996 inclusion of the Dalits in international law resulted from an exchange between the Committee for the Elimination of Racial Discrimination (CERD) and a small diaspora NGO based in Canada. Simply put, the patron—the CERD—offered statutory legitimacy for the Dalits in change of relevant information provided by the client—the diaspora NGO. The patron
was not simply acting in response to the client, but rather pursuing its own agenda with the help of the latter. Domestic changes explain why in 1996 India discontinued a tradition of reporting on the situation of the Dalits, a contingent fact that made the client's information valuable. The inclusion of the Dalits in human rights legislation did not occur in the way the diaspora NGO had suggested. Nevertheless, it created a “political opportunity” that was subsequently exploited by a new advocacy coalition.

Second, the multi-lateral meetings related to the Durban conference, as well as the conference itself, represent instances of contexts in which power politics was dominant. Part of the Dalit coalition's failure has of course to do with calculated interactions between the Indian and other state delegations. The Dalits needed the support of other states to influence the agenda of the conference, but as things turned out no state accepted to help them given India's opposition. The point I wish to make is that the rest of the story has to do with other less obvious opponents. A corollary of the patron-client hypothesis is the prediction that *advocacy coalitions will engage in competition* if the desired support from experts or state delegates proves to be scarce. This is dramatically the case in those human rights venues that involve an NGO gathering in parallel to a multi-lateral meeting. The Durban conference and its preparatory process nicely exemplify this kind of venues. The point is that the outcome of this competition among advocacy coalitions was clearly unfavorable for the Dalits. This defeat within the “NGO community”, as much as India's diplomacy at the inter-state level, contributes to explain systematically why the Dalit coalition failed to influence the agenda of the conference against racism.

Third, the professionalism-power politics distinction accounts for the seemingly inconsistent behavior of the Sub-commission. It is worth noting that the studies appointed by the Sub-commission were informative in nature. In contrast, the recommendation the Sub-commission did not issue was meant to have operative implications. More precisely, it could have led to a supra-national certification of the relevance of descent-based discrimination for the Durban conference, opening up opportunities that the Dalit coalition could have translated into paragraphs on caste in the programme of action that was to be signed by state delegates. The seemingly contradictory responses of the Sub-commission become intelligible as soon as the link between informative functions and professionalism, on the one hand, and operative functions and power politics, on the other, are taken into account. Rather than inconsistent, the organ's responses to advocacy are *dual*. In the case to be reported, the Sub-commission supported the Dalits in its informative capacity, but it bent to India's pressure when the demands of the advocacy coalition proved operationally relevant.
The remaining of the paper is structured as follows. In the first section I document the separate developments at the UN supra-national and Indian domestic levels that in 1996 put the situation of the Dalits under the jurisdiction of a human rights treaty. The second section briefly recalls the main events in the formation of the transnational Dalit advocacy coalition that was to exploit this opportunity. In the third section I offer a detailed narrative of the "Durban process" covering the intricacies of the preparatory phase, the overlaps with the regular activities of human rights organs and the development of the conference itself. In the fourth section I chronicle the responses of the CERD and the Sub-commission to Dalit human rights advocacy following 1996. The conclusion brings out two distinct pathways the Dalits pursued in their attempt to create new human rights, and reflects on the conditions that account for their success or failure at different venues.

1. An opportunity comes about at the CERD

The Toronto-based Ambedkar Center for Justice and Peace (ACJP) was the first NGO to advocate in the name of the Dalits at human rights organs. The ACJP’s crucial contribution to the development of Dalit transnational advocacy took place in 1996 at the Committee for the Elimination of Racial Discrimination (CERD). That year the organ was to examine the last report submitted by the Indian government. Crucially for the present narrative, at the occasion the CERD was open to consider alternate sources of information. Accordingly, the ACJP submitted a report in July 1996, and a month later a session of the Committee took place with Indian representatives and the presence an ACJP member as an observer. In order to better understand the significance of this session’s outcome, it is important to briefly describe the Committee’s procedures and explore the factors that made possible this point of no return. The CERD is a treaty body whose function is to monitor the implementation of the International Convention for the Elimination of Racial Discrimination (ICERD). In order to carry out this mandate, the CERD requires states party to the Convention to submit biannual reports dealing with the situation of racial discrimination in their territories, which includes mention to affected populations, relevant legislation and the state of its implementation. Since the end of the cold war, a number of procedural innovations were introduced with a view to increasing effectiveness in the monitoring process. In today’s practice, once a report is received one of the members of the Committee is designated “country rapporteur” and expected to lead the discussion with the representatives of the concerned government during the formal meeting. This enables at least one member to devote specific attention to the
human rights situation of the country in question, thereby enhancing the quality of the discussion\textsuperscript{vii}. The kind of information that can be incorporated to the process of examination was a matter of contention until recently, since some members of the Committee were reluctant to accept sources other than governmental. Nevertheless, during the 1990s it became customary to refer to other sources, notably to NGOs, whose reporting became, in the words of a former member, “vital” to the Committee\textsuperscript{viii}. But this does not mean that any NGO submission is automatically considered, for the alternate reports must conform to certain standards. For example, they must be concise and specify the relevant sources, minimize anecdotal evidence and restrict themselves to information relevant to the Committee\textsuperscript{ix}.

Against this background, there are two important reasons why the Committee accepted to consider the report submitted in July 1996 by the Ambedkar Center for Justice and Peace, founded and headed by Yogesh Verhade. On the one hand, Verhade’s experience in human rights advocacy had provided him with the expertise and the relevant contacts not only to meet the reporting requirements of the Committee, but also to prepare and submit the document on time\textsuperscript{x}. However, Verhade’s experience does not explain why the report was, apart from acceptable, \textit{relevant} to the work of the Committee for the Elimination of Racial Discrimination.

A reason can be found in the history of India’s reporting to the Committee and the expectations it had created. Since 1970, year of the formation of this treaty body, until 1987 the government of India had uninterruptedly included information on the Scheduled Castes and Scheduled Tribes in its periodic reports\textsuperscript{xi}. But the 1996 submission overtly omitted any reference to these sections of the population\textsuperscript{xii}.

There are developments in India that are not unrelated to the government’s failure to report on the situation of the Scheduled Castes and Tribes. Until 1989, what is today known as “atrocities against Dalits” was a regular and widely acknowledged social fact, though one without any specific definition in penal law. This situation changed with the passing of the Prevention of Atrocities Act in 1989, which identified a number of hitherto common crimes as atrocities, and accordingly established harsher punishment for the perpetrators\textsuperscript{xiii}. An implication of having given atrocities a legal denomination was that they could be counted. And so the National Commission for the Scheduled Castes and Tribes, an organ mandated by the Constitution to monitor the protection of these populations’ rights, took up the task of aggregating the figures on atrocities. From 1989 to 1996, the reports of the National Commission not only lamented the volume of atrocities committed in each year, but also drew attention to worrisome signs of aggravation over time\textsuperscript{xiv}. Considering that the task of the
Committee as a human rights treaty body is to assess how much party states have progressed, it is not surprising that the government of India preferred to omit information regarding atrocities and *a fortiori* the situation of the Scheduled Castes. Verhade’s report dealt with a number of recent cases of atrocities and presented general information on the practice of untouchability. The information he supplied thus came to fill the gap that the government of India had created by discontinuing its 20 years-long tradition of reporting on the Scheduled Castes and Tribes.

The Committee’s examination of India’s report in 1996 represents a milestone in Dalit international advocacy because, generally speaking, “this was the first time senior UN Treaty [experts were] discussing the discrimination of 250 million untouchables”\(^{xv}\). During the session, the representatives of India were asked why the Scheduled Castes and Tribes had not been included in the report. The answer, which summarizes India’s position in the years to come, observed that the Committee was concerned with racial discrimination, and since the Scheduled Castes and Tribes were not racial groups, information regarding these sections of the population was irrelevant to the work of the treaty body. Still, challenging India’s position the Committee stated in its concluding observations that the “situation of the Scheduled Castes and Tribes is under the purview of the Convention”\(^{xvi}\).

This decision was not only significant for Dalit transnational advocacy, but also for the history of the Committee for the Elimination of Racial Discrimination. Human rights organs are supposed to be composed of qualified experts working with a degree of independence from their respective governments. However, until the 1990s the Committee was largely perceived to be more concerned with foreign policy than with human rights monitoring. During this period, for example, the Committee did not hold any collective view on the reports submitted by governments, which were examined by the human rights experts solely in their personal capacity.

Thus the procedural changes of the nineties did not only divide work and open up some room for NGOs, but also entitled the Committee to make collective statements about the human rights situation of particular countries. This is what the “concluding observations” were initially meant for. But as a matter of fact practice evolved in such a way that the concluding observations also became a means for the Committee to suggest how the Convention for the Elimination of Racial Discrimination should be interpreted. That is to say, apart from their *supervisory* interest, the concluding observations progressively adopted *exegetic* functions as well\(^{xvii}\).

When the convention was drafted in the 1960s, the paradigmatic forms of racial
discrimination were South Africa’s apartheid and the color-line in the southern United States. During the nineties, however, the Committee adopted an “expansive” view of racial discrimination\textsuperscript{xviii} that tried to devoid the term of its biological overtones with a view to making the notion an equivalent of social discrimination in general.

The self-attributed prerogative to interpret the Convention, in combination with the expansive view of racial discrimination, led the Committee to collide with a number of state members during the nineties. Two remarkable cases have been that of Australia and Israel, in which the Committee asserted its right to condemn the action of these states with regard to aboriginal populations and Palestinians, respectively. Australia and Israel, in opposition, retorted that the situation of such populations was outside the purview of the Convention\textsuperscript{xix}.

The rejection of India’s claims in 1996 was another chapter in the Committee’s history of self-assertion vis-à-vis governments following the end of the Cold War. In the concluding observations the Committee stated that the situation of the Scheduled Castes and Tribes was within the scope of the Convention under the term “descent”, which represents one of the five possible grounds of “racial discrimination” as per its definition in the treaty.

It is worth stressing though that this innovative interpretation of “descent” did not respond to a suggestion by the advocates of the Ambedkar Center for Justice and Peace. The ACJP framed untouchability and atrocities as racial discrimination without the mediation of the notion of “descent”, thus appealing to a view of Indian castes as racially distinct groups\textsuperscript{xx}. In contrast, the Committee never stated that caste was race, but rather that caste discrimination, under the notion of descent, represented a contemporary form of racial discrimination.

Additionally, it is important to recall that the body’s jurisprudence had paved the way for the inclusion of caste within the purview of the Convention. Thus in the concluding observations of the 1992 session the Committee invoked the term “descent” to justify its jurisdiction over cases of discrimination related to Somalia’s internal conflict\textsuperscript{xxi}. This antecedent, along with the alternate report’s failure to distinguish caste and race, suggests that the Committee was the first one to frame caste discrimination under the category of “descent”, in spite of the Indian government and, most significantly, the pioneers of Dalit transnational advocacy.

Briefly put, the UN document that for the first time gave the Dalits a specific place in human rights legislation in 1996 was not a response to any transnational advocacy campaign. Rather, the initiative came from the Committee for the Elimination of Racial Discrimination. The organ was interested in expanding its competence by making racial discrimination and equivalent of unequal treatment in general. In this context, India submitted a report that denied the occurrence of racial discrimination in its territory and discontinued a twenty-years
long tradition of reporting on the Scheduled Castes. The omission did not go unnoticed, and the Committee received in parallel a formally sound alternate report on atrocities and untouchability. A small NGO not in consultative status had submitted the document, availing of skills and contacts acquired through years of UN advocacy. Given that India had stated to be free of racial discrimination, the Committee’s desire to expand its competence led the organ to make use of the alternate report to assert that the situation of the Scheduled Castes belied the claims of the Indian delegation. To this purpose, the Committee had recourse to a creative interpretation of the International Convention for the Elimination of Racial Discrimination. Referring to article 1 of the Convention, the organ stated that the Scheduled Castes were victims of discrimination on the ground of “descent”. As against this expansive view, the Indian delegation defended a restrictive interpretation of racial discrimination committed to distinctions based on biology or phenotype, thereby denying the competence of the Committee with regard to the Scheduled Castes. Ironically, the small NGO that had submitted the key alternate report endorsed nothing but this restrictive notion of racial discrimination, though to defend the opposite position. In what follows I elaborate on the details of this intricate episode.

2. The National Campaign and the international big brother

Advocacy work related to “descent” as defined by the International Convention and its implications for the Dalits was resumed in 2000, in the run up to the 2001 Durban World Conference Against Racism. But before undertaking a narrative of the process, it is important to refer to a number of events that took place in India between 1997 and 1999, since they account for the emergence of the new episode’s key actors.

In 1997 Human Rights Watch decided to produce Broken People, a report on India’s “Untouchables”. The report and its preparation played a crucial role in the formation of a new Dalit advocacy coalition, but it was not really meant to build on the favorable 1996 resolution of the Committee. Indeed caste discrimination was not the main concern of the document. As author Smita Narula clarified at the outset, “th[e] report focuses primarily on abuse against Dalit communities that have begun to assert themselves economically or organize themselves politically”xxii.

An important development triggered by Human Rights Watch’s report was the formation of the National Campaign on Dalit Human Rights (NCDHR), a federation of NGO Dalit advocates from fourteen states all over the country, yet mostly from South India. Its
emergence was bound up with the fact that *Broken People* was partially funded by the Ford Foundation. When Human Rights Watch approached Ford-India for a grant, the foundation accepted to lend its support on the condition that a national meeting with state-level NGO Dalit activists be convened to fix the agenda of the report. The meeting, which took place in July 1998, enabled Human Rights Watch to receive its promised grant on the one hand, and paved the way, on the other, for the launching of the National Campaign on Dalit Human Rights. Initially, the Campaign was planned to last from December 1998 to April 1999, but it was extended until December to conduct a petition drive that ended with the submission of a report (the “Black Paper”) to the Prime Minister of India. Both *Broken People* and the “Black Paper” received considerable public attention and helped to publicize the view that “Dalit rights are human rights”, foremost in India but also at the international level.

In March 2000 the International Dalit Solidarity Network (IDSN) was created, as part of a transnational advocacy campaign to include caste in the agenda of the 2001 World Conference Against Racism

### 3. Caste out caste…from Durban

The third World Conference Against Racism took place in Durban, South Africa in August-September 2001. The meeting was convened to agree upon a consensual programme of action that would provide guidelines for governmental policy making and standards for supranational monitoring. It is important to note however that the text under discussion had not been drafted during the Durban meeting, but in the course of a long and complex preparatory process. To a significant extent, the contents of the adopted documents could be presaged from the drafts on which they were based. That is why a narrative of the preparatory process proves necessary to understand why the Dalit coalition’s failure at the Durban conference.

Starting early in 2000, the preparatory process involved global and regional multilateral meetings, regional seminars of experts and satellite consultations by other non-governmental actors. Furthermore, specialized UN bodies, especially those dealing with human rights, also participated with recommendations regarding the agenda of the conference. These meetings, seminars, consultations and human rights organs opened up opportunities for advocates to influence the contents of the drafts to be discussed in Durban. The Dalit coalition participated in many of them, with varying results.

The Bellagio Consultation, convened by the International Human Rights Law Group in January 2000, was the first event related to the preparatory process in which the Dalit
advocates participated. The satellite meeting was attended by nearly 30 human rights activists and experts, including two members of the Committee for the Elimination of Racial Discrimination and one member of the Sub-commission for the Promotion and Protection of Human Rights. One of the experts from the Committee had participated in the 1996 session on India’s report and had supported the inclusion of the Scheduled Castes under the notion of “descent”. The consultation, chaired by another member of the Committee, recommended four themes for the draft programme of action on the basis of previous UN documents xxiv. “Caste systems” were included in the theme “Forms and Manifestations of Racism, Racial Discrimination, Xenophobia and Intolerance”, whereas “the Dalits and the Burakumin” were taken as examples of “Groups subject to discrimination on the basis of descent” under the heading “Victims”xxv.

When the General Assembly resolved in 1997 to organize a global conference on racism, it also decided that the Commission on Human Rights would act as the preparatory committee of the event. Subsequently, the Commission decided to organize two intergovernmental Preparatory Committee meetings (PrepComs), one in 2000 and the other in 2001, by the same token inviting human rights organs to make recommendations. In its year 2000 session, the Commission itself adopted the theme of the World Conference in its agenda, and the Dalit advocates used the opportunity to draw attention to their priorities. This was indeed the first intervention in human rights organs of the International Dalit Solidarity Network, which had just been formed in March 2000 - two months after the Bellagio consultation.

The first Preparatory Committee meeting (PrepCom) took place in May 2000, with the participation of state delegates and other non-governmental organizations. On the one hand, the PrepCom adopted with some amendments the four-theme structure recommended by the Bellagio consultation. However, much lesser attention was given to the sub-issues that the consultation had suggested. This meant that neither “caste systems” nor the Dalits were mentioned in the proceedings.

The PrepCom called to initiate the process of drafting and invited concerned actors to make their contributions. To this purpose, a series of expert seminars and intergovernmental meetings were organized on a regional basis between July 2000 and February 2001. But prior to these meetings the Sub-commission for the Promotion and Protection of Human Rights decided in August 2000 to include the theme of the World Conference in the agenda of its annual session. Thanks to their consultative status, Anti-Slavery International and the Lutheran World Federation made formal statements on behalf of the Dalit coalition. It is important to remind that until 2006 the Sub-commission was a subsidiary organ of the
Commission, and had as its primary function to supply research-based information on the situation of human rights in particular states. The Sub-commission also used to produce special working papers upon request of the Commission or by own initiative. That is why, mindful that “Victims” was one of the main themes of the conference against racism, the Dalit network urged the Sub-commission “to undertake a study of discrimination based on caste or descent with a view to identifying the communities affected”\textsuperscript{xxvi}. The proposal was finally adopted by the organ, which entrusted Sri Lankan member Vimala Goonesekere with the task of preparing the working paper. Still, it is important to note that the Sub-commission did not take up the advocates’ terminology. Instead of “caste discrimination” the issue was reframed as “discrimination on the basis of work and descent”\textsuperscript{xxvii}.

The next opportunity for the Dalits came with the Asian-Pacific regional seminar of experts convened in September 2000. Yet, neither caste nor discrimination on the basis of work and descent were included in the recommendations for the World Conference Against Racism \textsuperscript{xxviii}. Similar were the results of the regional intergovernmental meeting of Teheran in February 2001.\textsuperscript{xxix}

The Teheran meeting closed the first episode of the preparatory process. On the basis of the recommendations submitted by regional conferences, seminars of experts, satellite consultations and various human rights bodies, the Preparatory Committee submitted in February 2001 a draft declaration and programme of action to be used as an input for subsequent discussion. The latter part of the draft consisted in an enumeration of paragraphs drawn primarily from the regional meetings and seminars of experts, which loosely followed the four-theme structure decided in the first PrepCom. Sources of racism and racial discrimination regarded primarily poverty, and secondarily colonialism and the slave trade. As for the heading “Victims”, the identified groups were Africans and people of African descent, women, children, migrants, asylum seekers, refugees, internally displaced persons, the Roma and indigenous peoples. However, the caste system as a source of discrimination and the Dalits as an affected community received no mention in the draft.

On the basis of the Committee’s draft, a working group of state delegates was expected to amend, add or suppress paragraphs in order to clear a text to be voted for adoption during the second PrepCom planned for May 2001. However, after two sessions in March and May, respectively, the working group could not complete the task of clearing the drafts before the meeting. Moreover, the amount of text that had been cleared was deemed in excess to facilitate negotiations. Consequently, at the beginning of the second PrepCom it was decided that two separate working groups, one for the declaration, one for the programme of action, would carry on the clearing in parallel to the sessions of the meeting. On the other hand, a
group of 21 state delegates was appointed to reduce the volume of the cleared texts by identifying repetitions and other formal imperfections. In spite of these measures, the drafts were not ready by the end of the meeting. A third PrepCom had to be decided, and the group of 21 was reconstituted to recommend a “rationalized” text for adoption during the third and final meeting in July. A third PrepCom had to be decided, and the group of 21 was reconstituted to recommend a “rationalized” text for adoption during the third and final meeting in July.

The numbers of people involved in the process have been invoked to explain these delays. Recalling that the second PrepCom was attended by 134 state delegations, 21 UN and intergovernmental institutions and 185 NGOs, Michael Banton, former member of the CERD, has indeed observed that “[s]o large a body is unsuitable for the drafting of a text.” It is important to note however that NGOs were allowed to make formal statements in the working groups, but not during the sessions of the PrepCom. But on the other hand, disputes seem to have played a role as well. Fundamental disagreement on the issue of Israel/Palestine and the African group’s demand of reparations for slave trade ended up encouraging time-consuming discussions on paragraphs that were ultimately unacceptable for either of the parts.

What could the Dalit network get from this intricate process? In the March and May sessions of the working group, although NGOs were active in addressing the floor, only state delegates could make proposals of amendments, additions or suppressions dealing with the Committee’s draft. Hence intensive lobbying of government representatives was the only path for NGOs to have their priorities discussed by the working group. The Dalit network first approached Barbados, whose representatives were reportedly dissuaded by the Indian delegation. Nevertheless, the Dalit advocates succeeded in convincing the representative of Switzerland to propose the addition of a paragraph calling on states to ensure that all necessary measures, “including appropriate forms of affirmative action, are in place to prohibit and redress discrimination on the basis of work and descent.” The working group cleared the Swiss proposal and the paragraph was included in the text submitted to the Group of 21, which was required to rationalize the volume of the preliminary drafts in order to facilitate the process of adoption during the second PrepCom. As the Group of 21 could not complete its mission before the end of the meeting, its mandate was extended for a supplementary period following the second PrepCom and preceding the third one in July. Operating in closed sessions, the Group of 21 was to consider the Swiss paragraph during this inter-sessional period. The rationalized text submitted to the third PrepCom to the surprise of the Dalit Network omitted the paragraph on “discrimination on the basis of work and descent”. This and other flaws were brought to the attention of the Committee, which immediately before the third meeting issued a document containing six cleared paragraphs “that were inadvertently omitted from the proposal by the Group of 21.” Interestingly,
India was one of the 21 states that participated in the group. At any rate, the paragraph supportive of the Dalit network could not be considered during the third PrepCom due to shortage of time xxxiv.

The final drafts for the World Conference distinguished between three kinds of paragraphs: those adopted by any of the PrepComs, those that were still under discussion and those that had never been discussed. The text proposed by Switzerland upon request of the Dalit advocates belonged in the third category. On the other hand, among the five themes of the Programme of Action decided by the first PrepCom the Dalit paragraph was located under the heading “remedies”. Regarding the draft, then, the Dalit Network went to Durban to struggle for a single, “bracketed” paragraph that did not denounce the caste system or even name the Dalits as victims of human rights violations.

In the meantime, the Sub-commission for the Promotion and Protection of Human Rights considered in 2001 the working paper on discrimination based on work and descent decided in its year 2000 session. Most of the attendants, with the notable exception of the Indian observer, saluted the report submitted by Goonesekere and acknowledged that the problem was larger than it had been thought. They were nevertheless divided around two propositions: on the one hand, whether to appoint a second study; on the other, whether discrimination on the basis of work and descent should be recommended to the World Conference Against Racism. After a harsh debate, the Sub-commission decided to entrust Goonesekere with an expanded working paper on the topic, inviting him to extend the study to regions outside Asia, which had been the focus of the first one. However, as recalled at the outset, the polemic issue of discrimination on the basis of work and descent was finally not recommended to the conference xxxvi.

The rest of the story flows from the dynamics of the preparatory process. During the 2001 Durban World Conference Against Racism, an NGO forum took place in parallel to the intergovernmental meeting. The Dalit Caucus represented nearly 20 per cent of the forum, and the final NGO document included a proportional number of paragraphs related to their issues xxxvii. However, divisions upon the Israel/Palestine issue were not overcome, and the document ended up containing contradictory paragraphs in a language that many estimated unacceptable for international law standards. Moreover, participants have reported that rules of procedure were not always followed in the drafting process xxxviii. In view of these developments, a number of international NGOs including Human Rights Watch - which had recently published a report on caste discrimination xxxix - disassociated themselves from the document. And most significantly, the Secretary General of the conference finally decided not to recommend the NGO text to the governments’ meeting. Without the Secretary General’s
recommendation, the mark the Dalit Caucus had left on the NGO document did not have any chance to be translated into greater governmental attention. When the time came to consider the draft declaration and programme of action, the governments represented at Durban decided to leave for the end the bracketed paragraphs including the one on work and descent-based discrimination. As the meeting developed it became apparent that time would be insufficient to discuss the entire draft. Finally, upon a motion raised by Pakistan the bracketed paragraphs were finally “set aside”\(^{xl}\). This is how the Dalit question, after a year and a half of advocacy work, was finally “talked out” in Durban. In short, apart from India’s diplomacy, competition among NGOs for the support of state delegates also contributed to create impediments to the inclusion of caste in the Durban agenda. Along with governments, NGOs played a crucial role in determining the central issues of the preparatory process, namely reparations for slave trade and discrimination against the Palestinians. The focus on these issues left little time and attention for the Dalits. Furthermore, divisions within the “NGO community” nullified the visibility the Dalits had laboriously achieved in the Durban NGO document. This was dramatically attested by the organizing authority’s rejection to recommend the document to the governmental meeting due to contradictions related to the Israel/Palestine conflict and the “unacceptable” language in which they were expressed.

4. Two cheers for the Dalits: the CERD and the Sub-commission after 1996

In parallel to the preparatory process, an important development took place at the Committee for the Elimination of Racial Discrimination. The monitoring organ examined Bangladesh\(^{xli}\) and Japan’s\(^{xlii}\) reports in March 2001 - while the working group was amending the preliminary draft for the Durban conference. In both cases the Committee raised the issue of caste discrimination, lamenting the absence in the reports of disaggregated data on caste and caste-like communities. When the Committee, in separate meetings, invited both states to provide information on caste and similar groups, the member states replied that such communities fell outside the scope of the Convention, much as India had retorted in 1996. In the concluding observations, however, the Committee recalled its 1996 interpretation and, reaffirming its competence on the matter, urged Bangladesh and Japan to provide information on groups discriminated on the basis of caste or descent. The controversies triggered by the “descent” clause led the Committee to organize a thematic discussion in August 2002, one year after the Durban conference. The aim of the gathering
was to bring together a variety of concerned actors to get a broader picture on the issue of caste and descent-based discrimination. It was the second time the Committee was organizing an event of this nature, after a first thematic discussion on the Roma held in 2000. The meeting took place in Geneva, with the participation of twenty NGOs, government delegates from India and Nepal, and four members of the Sub-commission for the Promotion and Protection of Human Rights. With regard to the convention, the Dalit advocates proposed to interpret “descent” as an equivalent of “caste”, pointing out that the plight of the Dalits constituted a paradigmatic example of caste-, i.e. descent-based discrimination. However, in a subsequent closed session the Committee agreed on a broader understanding of “descent” encompassing various forms of discrimination due to inherited status, without confining itself to caste. The thematic discussion and the closed session that followed gave place to a General Recommendation in which the Committee stated how the “descent” clause was to be interpreted in the future. The organ did not make “descent” an equivalent of “caste”, but finally declared caste-discrimination as a species of descent-based discrimination with this caveat, the Dalit network thus accomplished its demand to have caste included “in Article 1 of the UN Convention on the Elimination of All Forms of Discrimination. The Committee’s thematic discussion on caste and descent brought the issue again to the attention of the Sub-commission, which in 2002 decided to appoint an expanded working paper on discrimination based on work and descent, with special attention to geographical areas outside South Asia. In 2003 the Sub-commission saluted the resulting working paper and, upon suggestion of some of its members and Christian NGOs associated to the Dalit network, decided to conduct a third study on discrimination based on work and descent. The second expanded working paper, presented in 2004, recommended to appoint a Special Rapporteur to conduct a general study on the state of the fight against discrimination based on work and descent all over the world. The Sub-commission endorsed the recommendation, and in April 2005 the Commission on Human Rights appointed two Special Rapporteurs to produce a study on discrimination due to work and descent on the basis of a questionnaire that was subsequently transmitted to governments, human rights institutions and national NGOs. As part of a process of reform, in 2006 the Human Rights Council replaced the Commission for Human Rights, which was dissolved along with its subsidiary organs including the Sub-commission. The Council extended the mandate of the Special Rapporteurs and in 2007 the study on discrimination based on work and descent was completed. However, as per March
2008 the report has not been published or discussed yet. With the abolition of the Sub-
commission, as the advocates put it, the study seems to lack “a forum for its consideration and
finalization, and has become caught in a transitional limbo”.

Conclusion

I suggested at the outset that a useful way to theorize the role of advocacy coalitions in the
creation of new human rights is to look at the interactions with other actors at the UN level,
assuming that their relationships are of the patron-client type, and their exchanges oriented
either to professionalism or power politics.

Before closing, a brief elaboration on the notion of human rights creation is in order. The
advocacy experience of the Dalit coalition reminds that the establishment of new rights does
not follow a single pattern. Instead, the case in point illustrates at least two relevant processes:
on the one hand, passing new legislation; on the other, changing the application of the existing
one. To the extent that different actors are entitled, respectively, to promulgate international
law and produce jurisprudence or fix legal doctrine, two pathways open up for advocacy
coalitions wishing to promote the creation of new human rights. The first one is to seek the
support of state delegates whose signature is necessary for the passing of new human rights
legislation. This can be achieved directly, notably through lobbying, or indirectly, by ensuring
the support of supra-national institutions able to influence multi-lateral negotiations (this is
what NGOs try to do with their parallel meetings). The second strategy is to convince human
rights experts to change the way they interpret human rights legislation.

Dalit advocacy attempted both pathways, but the details of the case show that they were much
more effective in changing the application of existing law than in leaving their mark in new
legislation. Advocacy work at the CERD and the Sub-commission exemplifies the former,
while the "Durban process" provides instances of the latter.

The aim of this paper was to show that specifically motivated exchanges (or their omission)
account for this difference in outcome. But in retrospective the case also provides hints
regarding the underlying rationality of these exchanges and the conditions that may predict
their occurrence and nature. In this respect, it is important to note that both strategies –inciting
the passing/a new application of law- were developed in contexts affording different
opportunity structures, therefore, different conditions for success. In general, the chances of
gaining support from state delegates or body experts will depend on the relevance of the
information to be provided in exchange; but the case of the Dalits insinuates that the relevance
of a piece of information will not necessarily be the same in a context led by professionalism or power politics. Similarly, when the attention of state delegates or body experts is a scarce good, the chances of being heard will depend on the ability to fair well in competition with other advocacy groups.

The above study indicates that the information "supplied" by the Dalit coalition formed in 2000 was not "demanded" in inter-state power politics at the time (hence the lack of interest of state delegates to use that information against India). Further, it suggests that the Dalit coalition was not in the best position to impose its agenda to the "NGO community".

These facts, coupled with a speculation on the underlying opportunity structures of the specific contexts of UN human rights advocacy, perhaps help retrospectively predict why the Dalits succeeded at the CERD and the Sub-commission, but failed at Durban.

Exchanges with the CERD responded to a professionalistic interest on the part of the treaty body, in a context free of competition with other advocacy coalitions. In the Sub-commission competition was not absent altogether, but restricted or "oligopolistic", since only NGOs in consultative status were granted participation in formal sessions. Additionally, the organ responded favorably to the demands of the Dalit coalition as long as power politics was not relevant (as attests the failure to recommend caste discrimination for discussion in Durban).

Finally, the "Durban process" provided venues characterized by inter-state power politics and open competition among NGOs. As the above monograph demonstrates, here the record of the Dalit coalition was the weakest.

More research is needed to better document these and perhaps other pathways advocacy groups may follow to instigate the recognition of new human rights, as well as the opportunity structures that different UN arenas afford. At any rate, careful examination of interactions with state delegates, body experts and other coalitions seems to provide a useful lens for elucidating how international advocacy contributes to the establishment of new human rights.

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Even though the scope of the word is in constant expansion, in general Dalits is the political identity of the part of the Indian population designated by the Indian Constitution as Scheduled Castes and formerly known as Untouchables. According to an usual representation, the traditional “caste system” divided Hindus into occupational and status groups; society was seen as made up of four varnas or strata reflecting a broad division of labour along with a ritual order of purity-pollution, with the Priests at the top, followed by the Warriors and Merchants, and with the Servants at the bottom. The Hindus that did not belong to any of the four varnas were the “Untouchables”. De iure, they were outside the varna system, but de facto they participated in it below the Servants. Traditionally, they performed the occupations perceived as the most polluting, like carrying dead animals, working leather or sweeping. Untouchables were also associated with “polluting” habits, like eating beef (and in more recent times, the consumption of alcoholic drinks). As ritual pollution was believed to be transmissible -like certain deseases- through bodily contact, the polluted “outcastes” were considered Untouchables. A number of traditional restrictions in inter-caste interaction followed, like Untouchables’
prohibition to use the same water source as *varna* Hindus or *varna* Hindus’ prohibition to come into contact with Untouchables. These traditional restrictions are incompatible with the Indian Constitution and other provisions passed after Independence.

As a measure of historical compensatory justice, the Indian Constitution allows for policies of “affirmative action” in favor of the Untouchables. The implemented policies entitle them to preferential access to places in educational institutions and jobs in the public sector. “Scheduled Castes” is the name the Constitution accords to the former Untouchables, and their right to “reservations” refers to their preferential status in access to education and public employment. Dalits is the self-attributed term that broadly designates in the political arena the same segment of the Indian population that the Constitution calls Scheduled Castes.


iv In this regard I follow Sidney Tarrow’s observation that coalition constitutes “a more precise term” than network. Coalitions represent “means-oriented arrangements that permit distinct organizational entities to pool resources in order to effect change.” Tarrow Sidney, *The New Transnational Activism*, Cambridge University Press, 2005, p. 164


vi Ibid.


viii Ibid.


x Long overdue reports like India’s in 1996 follow a cursory procedure.


xii Fourteenth periodic reports of States parties due in 1996: India, CERD/C/299/Add.3 (1996)

xiii The full name of the bill is “The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989”.

xiv First (1992-93), Second (1993-94) and Third (1994-95) reports of the National Commission for Scheduled Castes and Scheduled Tribes.


xvi CERD A/51/18 (1996)


xviii Banton Michael, art. cit.


xxi CERD/C/SR.949. During that session a member of the Committee had objected that Somalia’s case came outside the scope of the Convention, pointing out that the concerned groups were not racially or ethnically distinguishable, since they were different in phenotype, spoke the same language and practiced the same religion. Another member replied that this posed no hindrance to the Committee’s jurisdiction, since those groups were in fact distinguishable by descent (CERD/C/SR. 948). The remark was based on the prevalent understanding that Somalia’s civil war was a conflict between clans united by common ethnicity but separated as watertight endogamous groups. Cf. Besteman Catherine, “Representing Violence and “Othering” Somalia, Cultural Anthropology, 11:1, 1996


xxiv Namely, General Assembly resolution 52/111 of 12 December 1997

xxv Report of the Bellagio Consultation on the UN World Conference Against Racism, International Human Rights Law Group, January 2000

xxvi Sub-commission on the Promotion and Protection of Human Rights, Fifty-second session, Summary Record of the 8th meeting, E/CN.4/Sub.2/2000/SR.8

xxvii Sub-commission on the Promotion and Protection of Human Rights, Fifty-second session, Resolution on
discrimination based on occupation and descent (E/CN.4/Sub.2/2000/L.14)

Although the main theme was “Migrants and trafficking in persons with particular reference to women and children”, the Dalit advocates did not spare efforts to have their voice heard. A joint NGO statement thus called “to give full consideration to the elimination of caste as an insidious and deeply entrenched form of discrimination on the basis of work and descent”, and indeed some experts took up the issue in their interventions. Report of the Asian-Pacific regional seminar of experts on migrants and trafficking in persons with particular reference to women and children, A/CONF.189/PC.2/3


Preparatory Committee, Report of the Preparatory Committee on its second session, A/CONF.189/PC.2/30


Human Rights Features, “Caste Away, or how the Dalit Cause was lost at Durban”, South Asia Human Rights Documentation Center, September 20 2001, http://www.hrdc.net/sahrdc/hrfeatures/HRF44.htm

World Conference Against Racism, Draft Programme of Action, A/CONF.189/5

World Conference Against Racism, Draft Programme of Action, A/CONF.189/PC.3/8/

The INGO International Movement Against All Forms of Discrimination and Racism (IMADR), one of the allies of the Dalits in the Durban process, argues that “it later came to the public knowledge that the withdrawal was due to the strong pressure from India and the United States on Bern.” I thank one of the anonymous reviewers for drawing my attention to this version of the facts.


Instead, the organ contented itself to reiterate the less specific call it had made the previous year to consider debt bondage in its connection with discrimination based on race or descent.

Sub-commission on the Promotion and Protection of Human Rights, Fifty-third session, Summary Record of the 16th meeting, E/CN.4/Sub.2/2001/SR.16

WCAR NGO Declaration, Advocacy Materials and Documents (CD produced by the National Campaign on Dalit Human Rights)

Prokes Mirek, “WCAR NGO Forum – Analysis from the organizational point of view (Procedures, Manipulations, Prejudices and Misunderstandings”, website of Internet Centre Anti-Racism Europe, http://www.icare.to/docs-wcar.html


Human Rights Features, “Caste Away, or how the Dalit Cause was lost at Durban”, South Asia Human Rights Documentation Center, September 20 2001, http://www.hrdc.net/sahrdc/hrfeatures/HRF44.htm

CERD/C/SR.1457 and 1458 (2001)

CERD/C/SR.1444 (2001)

CERD/C/SR.1531

CERD, General Recommendation XXIX, Article 1, paragraph 1 of the Convention (Descent), 01/11/2002

Black Paper: Broken Promises and Dalits Betrayed, National Campaign on Dalit Human Rights, 1999

Sub-commission on the Promotion and Protection of Human Rights, Fifty-fourth session, E/CN.4/Sub.2/2002/L.42

Expanded working paper by Mr. Asbjørn Eide and Mr. Yozo Yokota on the topic of discrimination based on work and descent, E/CN.4/Sub.2/2004/31

“Caste-based discrimination and analogous forms of inherited social exclusion: Discrimination based on work and descent”, Joint NGO written statement, Human Rights Council, seventh session, 3-28 March 2008