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When states and individuals meet: The UN Ombudsperson as a ‘contact point’ between international and world society

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Abstract

Interaction between individuals and states is considered a distinctive character of domestic politics, while international politics is the ‘realm of states’. However, it is becoming more common to encounter *loci* where both states and individuals interact at the international level, such as in the cases of the Special Tribunals for Rwanda, Sierra Leone, Liberia and the Former Yugoslavia as well as the International Criminal Court (ICC). Within the International Relations (IR) theory panorama, one would expect the English School of International Relations (ES) to have the theoretical and analytical tools to conceptualize synergies between states and individuals, but this is not evident. This article asks, how does the interaction between individuals and states take place in the ES? We argue that this interaction takes place via ‘contact points’, defined as those international bodies that bring together states and non-state actors, be they individuals or groups, interacting on equal grounds in terms of rights and responsibilities towards each other. The notion of ‘contact point’ is developed inductively by focusing on the Office of the Ombudsperson to the Islamic State of Iraq and the Levant (ISIL; Da’esh) and Al-Qaida Sanctions Committee. This research has theoretical implications. We aim to refine, sharpen and advance both the ES’s theoretical and analytical architecture. The contribution we seek to make is one that will better equip ES scholars to conceptualize and analyse those secondary institutions that allow states and individuals to enjoy rights and duties equally. By so doing, we will make possible for the ES to provide a more fine-grained account for these synergies than other IR theories.

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The notion of 'contact point' does set a new agenda for the ES, since interactions between individuals and states are likely to become a constitutive essence of world politics.

Keywords

contact point, English School, Ombudsperson, sanctions, United Nations, world society

Introduction

In international politics, it is now common to encounter *loci* where both states and individuals interact by enjoying legal and political rights. For instance, the Special Tribunals for the notorious conflicts in Rwanda, Sierra Leone, Liberia and the Former Yugoslavia as well as the International Criminal Court (ICC) provide crucial examples of how the interaction between individuals and states has been *formally* institutionalized. One may notice how organizations such as the International Court of Arbitration of the International Chamber of Commerce and the Permanent Court of Arbitration bring together interests, rights and responsibilities of both states and non-state parties in the so-called 'investor-state' cases.¹ In the same fashion, the General Court, a 'sub-court' part of the European Court of Justice (ECJ), allows 'natural and legal persons' to seek justice whenever there is reason to believe that their rights have been infringed by the European Union (EU).² Such synergies, mostly denied or neglected by neorealists or neoliberalists due to their state-centric ontological positions, have been captured in depth by strands of the literature on global governance and international organizations dealing specifically with instances of state and non-state intersections in world politics.³ Within the International Relations (IR) theory panorama, one would expect the English School of International Relations (henceforth ES) to have the theoretical and analytical tools to conceptualize and deal with such synergies between states and individuals better than other theories specifically thanks to its 'ontological pluralism' focusing on *both* states (international society) *and* individuals (world society).⁴ However, notwithstanding its vantage point as *via media* between realism and liberalism, the ES has not yet come up with proper theorization of these nexuses and synergies between the two domains despite its analytical potential to capture diachronically the nuances and underlying practices of a changing international order.⁵

Thus, this article asks: how does the interaction between individuals and states take place in the ES? We argue that this interaction takes place via 'contact points', defined as those international bodies such as offices and tribunals (what in ES terms are called 'secondary institutions') that bring together states *and* non-states actors, be they individuals or groups, interacting on more equal grounds in terms of (1) responsibilities and (2) rights towards each other. By 'on more equal grounds', we mean that within contact points, it is not taken for granted that states' interests will prevail automatically due to power dynamics and hierarchical asymmetries, but rather than there is an *interaction* between states and individuals, the outcome of which *may be* in favour of states *as much as* in favour of individuals. When the latter happens, states' interests can prevail again only at higher political and reputational costs, as will be shown below. In this article, the notion of 'contact point' is developed inductively by focusing on the Office of the

Ombudsperson to the Islamic State of Iraq and the Levant (ISIL; Da'esh) and Al-Qaida Sanctions Committee (hereinafter 'Ombudsperson'). The Ombudsperson is the quintessential *trait d'union* between individuals being targeted by sanctions and those states that asked the United Nations Security Council (UNSC) to impose sanctions. The Ombudsperson is a typical case for the initial theoretical conceptualization of 'contact points'. This international body operates with a dual set of rights and rules for states and individuals, complex actorness and institutional autonomy or independence. Especially, the Ombudsperson operates in the realms of security for states and human rights for individuals, which exemplifies a typical interaction between them. To empirically illustrate the case of the Ombudsperson as a 'contact point', this piece of research makes use of the available secondary literature on world society and international sanctions, of legal documents and United Nations (UN) documentation accessible on the Internet and also benefits from an interview with Kimberly Prost, former Ombudsperson at the UN.

This research has theoretical implications. We aim to refine, sharpen and advance both the ES's theoretical and analytical architecture. The contribution we seek to make is one that will better equip ES scholars to conceptualize and analyse those secondary institutions that allow states and individuals to enjoy rights and duties equally. By so doing, we will make possible for the ES to provide a more fine-grained account for these synergies than other IR theories. As has been notably argued, 'what is crucial ... is not whether one begins with international society or world society but rather how a theoretical account incorporates both elements'.⁶ The notion of 'contact point' does set a new agenda for the ES, since interactions between individuals and states are likely to become a constitutive essence of world politics. Without this conceptual innovation, we argue that the ES would be unable to understand current practices of international and world societies.

The argument is divided into five sections. First, we delve into the ES literature on 'world society' and define it for the scope of this article. In the second section, we conceptualize 'contact points' as an analytical tool and their relation to the concept of 'institution' in ES theory. Then, we summarize and present the evolution of targeted sanctions as intended by the Security Council. In the fourth section, we review the methods that were used by the Security Council to deal with legal challenges with a specific focus on the focal point and, especially, the Ombudsperson. By so doing, we show the plausibility of the analytical tool of 'contact points' in terms of actors, rules and institutions. Finally, we present our conclusions and suggest ways in which these findings can be further investigated.

The English School and world society

The ES has been at the centre of IR theories in the past decades.⁷ Its core essence revolves around the critique of the view of an international order being solely ruled by anarchy, by arguing that instead several norms, institutions and rules discipline the relations among states. This set of norms, institutions and rules would constitute an *international society*, rather than a pure *international system*,⁸ where anarchy would be governed by pure power politics *à la* Hobbes and Machiavelli. At the same time, since its very inception, the ES had the intuition of contemplating the possibility that non-state actors would also

determine the outcome of policy processes at the international level – in ES terms, the realm of non-state actors has been called *world society*. Already Martin Wight referred to the three traditions in International Relations – realism, rationalism and revolutionism⁹ – that have been associated with the tripartite conceptualization of international system, international society and world society.¹⁰

In ES tradition, the role of individuals is key in a ‘world society’, but multiple ambiguities remained probably due to the lack of interest or attention paid to the importance (and analytical utility) of this term. As has been aptly argued, the category of world society has been treated as an analytical ‘dustbin’ and as a ‘Cinderella’, chronically undertheorized in the light of its alleged ‘revolutionist’ character which is not visible in contemporary world politics.¹¹ As noted above, it is not accident that Wight refers to the term as a ‘revolutionist tradition’, as to say that a radical change in the international system would be necessary to move to a ‘world society’.¹² The revolutionist tradition is understood by Wight as characterized by relations among individuals that are not mediated by states. Manning talks about a world society as ‘the nascent society of all mankind’,¹³ while Bull, instead, defined ‘world society’ as not merely a degree of interaction linking all parts of the human community to one another, but a sense of common interest and common values on the basis of which common rules and institutions may be built. The concept of world society, in this sense, stands to the totality of global social interaction as our concept of international society stands to the concept of the international system.¹⁴

Importantly, at the end of ‘The Anarchical Society’, Bull maintains against the revolutionist view that a world society is part of a ‘world political system’, or a ‘worldwide network of interaction’ among states and non-state actors,¹⁵ and this ‘in no way implies the demise of the state system’ since, historically, ‘the states system has always operated within a wider system of political interaction’.¹⁶ A few years later, Buzan returned to this idea, arguing that world society in the ES should be used specifically to refer to a social structure where states, individuals and non-state actors are in play together and none of the three dominate over the other two.¹⁷ However, it has been recently said that in contemporary international relations, ‘Buzan’s standard for world society, premised on equality between actors, is perhaps too exacting’.¹⁸

In most recent years, the idea that world society has to be revolutionist has been challenged, and alternative readings have been offered. For example, with a specific focus on international criminal law, Jason Ralph investigated the case of the ICC and concluded that the Rome Statute certainly contributes to the constitution of a world society. According to Ralph, a definition of ‘world society’ should be clear about its constitutive rules. The fact that both ‘international society’ and ‘world society’ share a:

common cosmopolitan consciousness based on humanity, as well as a common interest in seeing individuals punished for crimes that offend humanity, has been generally accepted. The difference between the two societies, however, lies at the level of rules and institutions.¹⁹

In terms of rules, the Rome statute ‘codifies common interests, values, and institutions that are notionally independent of states’.²⁰ In terms of institutions, the statute created the ICC, which is revolutionary to the extent that it allowed a prosecutor to launch an

investigation based on evidence gathered by non-governmental organizations (NGOs).²¹ In addition, one should notice that the ICC, as a permanent court:

can exercise jurisdiction without prior authorization either from states or from the Security Council. In this respect, the institution of criminal justice has been released from the rules of international society, and its sociological impact is no longer mediated by states. Criminal justice in other words is now an institution of world society.²²

However, he later argues that such world society cannot entirely be detached from a society of states:

The drafters of the Statute recognized the benefits of a world divided into nation-states, each acting as an agent of humanity, and the importance of comity between nation-states. In this respect, the organizing principle in this conception of world society is complementarity.²³

Given his interest in seeing how the ICC operates in a society of states, we see Ralph's work as pioneering and complementing ours. However, one should remember that the main purpose of his book is that of showing how the Rome Statute 'helps to constitute world society'²⁴ rather than exploring the ICC as an institution shared by international and world society and the synergies between the two. In other words, Ralph fails to notice that the ICC, rather than being an institution of world society, is in fact a 'contact point' between international and world society, as we aim to conceptualize in the next section.

In another recent treatment of world society, Ian Clark has defined the concept as follows: 'The realm of the individual, of the non-official group or movement, and of the transnational network of nongovernmental agents'.²⁵ In his work, he also does acknowledge that this realm is inextricably linked to that of sovereign states, and by showing how world society has conferred legitimacy to several institutions of international society over the centuries, he develops this argument following from this assumption. Nonetheless, at a closer look, it seems that Clark's work is more interested in the *impact* of world society over international society and in analytically defining the former, rather than exploring the intersections between the two.²⁶ The same can be said for recent work produced by Costa Buranelli²⁷ and Stivachtis,²⁸ who both look at how international society and world society impact on one another, rather than at their interaction(s) and shared practices.

In his insightful contribution to debates over 'world society', Thomas Davies has recently argued that 'the institutions of international society and of world society cannot be understood in isolation from one another, but instead are often mutually dependent and in some cases – such as the market – the institutions are shared'.²⁹ While he should be credited for this innovative assumption, which we fully share and as will be evident in the article, he is nonetheless more interested in demonstrating 'how there are indeed institutions, rules, and norms [...] in world society', contrary to the common assumption that only international society can feature them.³⁰ This has been recently echoed also by Matt Weinert who has argued in favour of a 'spatialised reading' of world society defined by discrete geographies within the framework of 'cultural heritage', thus allowing for the identification of its primary and secondary institutions.³¹

Thus, scholars of world society suggest that (1) whether referring to humanity *in toto* or some sectors of it, world society is based on a human, non-statist ontology; (2) while world society may well be analytically independent from international society, it is functionally linked to it through its own practices and institutions (and vice versa); and (3) all authors seem to imply that the best exercise in terms of advancing ES research is to look at intersections between the two domains. However, albeit acknowledging them, they do not fully explore them.

To be sure, ES scholars have indeed referred to the interaction between individuals and states in the international system, but not in a systematic and rigorous way. After all, Martin Wight himself treated international system, international society and world society as being ‘not like three railroad tracks running parallel into infinity’, but rather as ‘streams [...] sometimes interlacing’.³² Barry Buzan confirmed that ‘the three domains or type unit [what he calls interstate, interhuman and transnational society] all are in play together’,³³ but he also realized that unfortunately the ‘oppositional view of the relationship between international society and world society’ and the relationship between their components of order ‘has become rooted in ES thought, and serves to cut off the possibility of positive interaction’.³⁴

The theoretical *locus* where the ES explores interactions between international and world society at their deepest is the category of solidarism within international society. Solidarism, in ES theory, is a broad church. It can be understood either as ‘state-centric’ solidarism or as ‘cosmopolitan solidarism’.³⁵ The former refers to ‘the possibility that states can collectively reach beyond a logic of coexistence’ to pursue joint gains or realize shared values,³⁶ while the latter illustrates states’ disposition ‘to give moral primacy to “the great society of humankind”’.³⁷ It is evident that in both (sub)definitions of solidarism, states are pivotal. As Buzan himself acknowledges, for solidarists:

the great society of humankind may have force as a moral referent, but for the most part it lacks the agency to implement and defend universal rights. Only states, or secondary institutions *largely under the control of states*, can do that [...].³⁸

In short, ‘while cosmopolitan logic is the main moral impetus for the solidarist camp, state-centrism is the dominant practical theme’.³⁹ Dunne⁴⁰ seems to have lent his support to Buzan’s notion of state-centric solidarism, when he observes that ‘the development of world society institutions is dependent on the ideational and material support of core states in international society’.⁴¹ However, cosmopolitan solidarists are keener to emphasize the dual existence of rights and duties of states and individuals and the independent authority or potential of international organizations to enforce or promote them.⁴² This is evident, for example, in the works of Lauterpacht, Bull and Knudsen in regard to the collective enforcement of common principles (by means of international organization and international courts of justice) and the reservation of the use of force for the common good conceived as the basic organizational principles of international society.⁴³

According to cosmopolitan solidarists, principles and institutions associated with cosmopolitan solidarism are, ‘theoretically and empirically, also possible in contemporary international society, in spite of its ongoing pluralist bases’.⁴⁴ After all, one of the virtues of the solidarist wing of the ES is that ‘it stresses the interconnectedness of international

and world society and contributes to normative theorizing a progressive agenda'.⁴⁵ But how is this interconnectedness played out? This is still *terra incognita* in the ES. In this respect, the key questions that solidarists still ask are 'whether individuals can be subjects of rights and duties under international law in their own right and whether such rights and duties would be fundamentally at odds with pluralist international society'.⁴⁶

The literature review above, in sum, shows that although there have been considerable efforts to distinguish international society from world society, the current debate on the ES has not fully explored the 'grey area' between them so that interactions between states and individuals *on more even grounds* fall outside of the theoretical framework. Placing institutions such as the ICC, the Special Tribunals, the European Court of Human Rights and the International Court of Arbitrage under either (solidarist) international or world society would not be fully accurate as they are institutions created by states, but independent from them and that are mediating between rights and duties of states as well as of individuals/non-state actors. For this reason, we argue that the ES vocabulary should be enhanced with the concept of 'contact points'.

Contact points and the theorization thereof

Drawing on Wight's conception of the three traditions constantly intertwining and crossing each other as outlined above, and on Kant's notion of 'complementarity' when describing the ideal relationship between national, international and cosmopolitan law,⁴⁷ we observe that a world society does not have to be 'revolutionist' to exist, but can coexist with an international society, enhancing and 'expliciting' its normative and moral content through its own practices and institutions.⁴⁸ After all, in his major theoretical reworking of the ES, Buzan affirmed that thanks to his new tripartition based on interstate/interhuman/transnational domains:

the key English School idea that the three traditions are understood to be simultaneously in play is preserved, but now on the grounds that social formations involving the three types of unit are always expected to be present in international systems to some degree.⁴⁹

However, the question is – how does this all hang together?⁵⁰ We argue that these domains interact and overlap through specific and analytically discernible institutions, which we call 'contact points'.

'Contact points' are those international bodies, offices and tribunals ('secondary institutions' in ES terms) where this synergy between the interstate and interhuman domains is visible – *loci* where responsibilities and rights are possessed by states *and* individuals, too. Therefore, we argue that the notion of 'contact points' complements empirically the intellectual and analytical exercise of distinguishing between an international and a world society by keeping them *analytically distinct* while bringing them into a *single, coherent* analytical framework.

In functional terms, a contact point facilitates and formalizes the interaction of states and individuals, assigning equal rights and duties to both. According to our inductive logic, presented in the introduction, 'contact points' can have several functions – for example, they can adjudicate, ensure equality and mediate. In this article, we show the

operation of a contact point with respect to adjudication through the case of the Ombudsperson. However, it should be remembered that the theorization of contact points presented here is inductive and in its infancy, and we do not rule out other possible functions that may be performed by contact points. In sum, at the current stage of theorization, adjudication, mediation and insurance of equality are the functions, but not necessarily *the only functions*, of 'contact points'.

Why exactly do we talk about 'contact points'? We argue that the idea of a 'contact point' well speaks to the several references made in the literature to the fact that international and world society interact, intertwine and cross each other. They feature 'contact' because in these secondary institutions, the two societies meet each other and present both states and individuals with rights and duties. They are 'points' because these secondary institutions are necessarily specific 'segments', arenas and realms of two wider environments – that of international and world society, which can be detached in some occasions but can overlap in others. These instances are 'contact points'. It is akin to mathematics, where two functions have the same value when they meet at a specific point, called appropriately 'point of contact'.

'Contact points' are distinguished by the presence of certain *actors*, *rules* and (formal) *institutions*. A 'contact point' constitutes the *locus* for interactions between specific *actors*, namely individuals *and* states both enjoying a degree of *agency* in the policy process. The interactions among actors are disciplined by specific *rules*, namely by the existence of shared procedures, statutes and legal documents that assign *both* sets of actors rights and responsibilities. Finally, the abovementioned actors and rules are *institutionalized*, namely they are the product of durable and legitimate practices that are embodied in an international organization, body or specific sections/component of them (e.g. the Permanent Court of Arbitration or the Chief Prosecutor of the ICC). To sum up, according to our definition, a formal institution that qualifies as a contact point is characterized by independent decision-making processes, initiative and jurisdiction, as well as complex actorness (*viz.* states and non-state actors).

Given that we suggest that contact points are 'institutionalized' *loci* between international society and world society, it is inevitable that we engage with the concept of 'institution' within the ES. As is commonly known, the School has a sociological, quasi anthropological conceptualization of institutions, defined as rooted, durable but by no means eternal codified practices that channel and direct the behaviour of states (or, in general, actors), giving a sense of order and predictability to their actions.⁵¹ They define the socio-structural context where actors operate and who the legitimate actors are within that context. However, the concept of institutions has been further sharpened by the distinction between *primary* and *secondary* institutions. The former refers to 'institutions' broadly characterized above, while the latter refers to international organizations and agencies related to them, akin to how neoliberal institutionalists speak of 'regimes' or 'organizations'.⁵² As noted above, it is this latter reading of institutions that we put at the core of our definition of 'contact point' – that of secondary institution.⁵³ However, ES scholars may possibly take our framework further, revise it and explore the possibility to have also primary institutions as potential 'contact points'. Primary institutions such as the market or the environment, for example, have been described as authentically meeting human needs,⁵⁴ and recent scholarship on 'hybrid institutions' is currently being

produced.⁵⁵ After all, given that secondary institutions always emanate from primary ones, it may be argued that contact points *qua* secondary institutions are always linked to principles and norms underpinning some primary institutions and their derivatives. In this article, for example, one may argue that the Ombudsperson as a contact point reflects the operation of the primary institution of human rights and its derivative of due process. This could potentially lead to a further analytical distinction – as there are primary and secondary institutions, so there can be primary and secondary contact points. While for the sake of brevity this will not be further investigated in the article, we will return on this potential research development in the conclusions.

Having clarified how we define contact points and their link to the ES theoretical toolkit, at this point one may ask – so what? We believe it is important to theorize contact points for the following reasons. First, the existence of ‘contact points’ signals that world politics is becoming more and more a complex realm, where states and individuals may, in some instances, enjoy less uneven rights and responsibilities. Second, the existence of ‘contact points’ signals, from a more theoretical perspective, that not only does a world society exist but also that it is not necessarily detached from the society of states. Rather, ‘contact points’ facilitate the complementarity of the two societies, making international society less exclusionary by including people with their own rights and responsibilities in world politics. Third, and finally, by introducing the concept of ‘contact point’ in the ES framework, one may actually use it as a proxy for the growing role of individuals in world politics. In other words, the more contact points exist in world politics, the more we witness the manifestation of a world society that, rather than being subordinate or in opposition to international society, is equal to it in terms of rights and duties of its constitutive actors.

Having provided an initial theorization of ‘contact points’ in the ES, it is now time to start delving into an empirical analysis thereof. The remainder of the article is a qualitative analysis of the case of the Ombudsperson with the analysis of primary and secondary sources as well as with interviews done with UN officials in 2017. In order to respect the wish of the interviewees, their identity has been kept hidden unless differently authorized.

The evolution of sanctions: from comprehensive to targeted

The Security Council of the UN imposes sanctions under Chapter VII of the Charter. Given that the UN is an association of *states*, sanctions were interpreted as being on states, which were the cases of Southern Rhodesia, South Africa and Iraq among others.⁵⁶ In 1967, Galtung wrote that ‘with the present structure of the international system, territorial integrity makes [individual sanctions] – unilateral, multilateral or universal – impossible unless they are combined with a military presence’.⁵⁷ Former UN Secretary-General Boutros-Ghali asked ‘whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects’⁵⁸ and, by so doing, confirmed that the logic of sanctions still in the 1990s was to target economies to indirectly influence their leaders. It is no coincidence that, for instance, Milosevic was included in the sanctions list only once he was out of office in 2000, and Saddam Hussein

was not sanctioned by the UN until 2003. However, currently, the UN rarely imposes sanctions on entire states and, instead, it has established the practice of sanctioning economic sectors and, especially, individuals and entities. This practice is known as *targeted sanctions*.⁵⁹ Why did then the UN start to impose sanctions on individuals?

The evolution of sanctions from their comprehensive nature to a targeted form that took place in the 1990s is mainly due to three factors. First, international sanctions were thought to be ineffective to achieve political objective⁶⁰ and, sometimes, they were strengthening their targets.⁶¹ Second, sanctions were affecting mostly civilians and innocent bystanders, so causing terrible humanitarian costs mainly on local populations.⁶² Sanctions were considered an important instrument for peace even by those who were criticizing it, such as Boutros-Ghali,⁶³ but radical reforms were unlikely without innovations in the international system.

This innovation, which is the third factor, was the emergence of the international individual responsibility norm in the second half of the 1990s. Affected by the tragedies of the disintegration of Yugoslavia, the genocide in Rwanda and the protracted conflicts in Sierra Leone, the international community was under pressure to provide a solution to situations that were intolerable in the *new world order* after the end of the Cold War. Parallel to these creations, the Rome Statute establishing the ICC represents the institutionalization of a norm that was observed only in Yugoslavia, Rwanda and Sierra Leone,⁶⁴ so creating a landmark decision to formalize the existence of an international individual responsibility.⁶⁵

The evolution of sanctions took place in the same normative context. Initially, some argued that sanctions should be tailored to operate at the micro and intra-national level as well,⁶⁶ therefore accepting to depart from a state-centred view of the past. Then, the Security Council established the practice of imposing sanctions on individuals. First, in response to the terrorist attacks against the US embassies in Kenya and Tanzania, the Security Council approved Resolution 1267 on 15 October 1999 imposing sanctions on 'the Afghan faction known as the Taliban', thus unlinking the Taliban from the government of Afghanistan. Second, the Security Council passed Resolution 1333 (2000) adding Osama bin Laden, individuals and entities associated with him and with Al-Qaida to the list of targets of the 1267 committee.⁶⁷

Since then, the UN has adopted a targeted approach to sanctions⁶⁸ with a special emphasis on individuals and non-state actors.⁶⁹ Targeting individuals created a new set of problems that had not been anticipated. Especially in the immediate aftermath of 9/11, but even more as a general principle, names were added to the 1267 list without special care for human rights and due process considerations.⁷⁰ Individual rights that were guaranteed at the national level in several UN members were under attack by the Security Council, which was made by the very same states. This double standard raised the tension between individuals and states that created a demand for institutions that would mediate and adjudicate disputes among them. These are the 'contact points' between an international society of states and world society of individuals we defined in the previous section.

World society actors, rules and institutions: towards the emergence of 'contact points'

Complaints of individuals targeted with sanctions by the Security Council were originally directed at national embassies and permanent representations at the UN, but they

were not successful. Then, individuals turned to national and regional courts to have their case heard. Initially, courts stated that foreign policy fall outside their areas of competence, but the Kadi case in the ECJ reversed this approach. In 2003, a Saudi citizen named Mr Yassin Abdullah Kadi appealed against the EU Regulation (EC) No 881/2002 implementing UNSCR 1390 (2002) at the Court of First Instance (now the General Court) of the EU.⁷¹ Although the EU limited itself to transpose a Resolution of the Security Council, Kadi claimed that the decision to restrict his freedom taken by the EU was in violation of due process principles, which are both in international treaties and, especially, in EU law. When the first judgement was issued by the Court of First Instance in 2005, even if it allowed the listing to be maintained, the attention was brought to the fact that the Court actually reviewed the decision of the Security Council and stated that certain principles could not be violated by EU law even when implementing the decisions of the Security Council. The judgement was in favour of maintaining the name on the list, but Kadi appealed against the decision. In 2008, the ECJ agreed with Kadi and ordered the Council to annul the regulation unless steps were undertaken to meet acceptable due process standards. The ECJ established that individuals whose freedom and liberty are restricted by EU legislation should have guaranteed fundamental rights such as a due process and a fair trial, even if such decision implements the will of the Security Council. Individuals have the right to know the reasons that motivate such restriction. They have the right to be heard, and they should have the instruments to remedy to mistakes made by the authority. Until, these rights were recognized to individuals only *de jure*, so the novelty was that rights of this kind were *de facto* granted to individuals at an international level. This is relevant because whereas the direct targets of the decision were EU institutions, the indirect target was the UN and its Security Council. Concerned with the possibility to undermine the whole sanctions policy of the UN, the Security Council addressed these issues by creating a new forum for interaction between individuals and international organizations. By doing so, it is shown how practices, actors, norms and institutions of an international society of states coexist with practices of a world society of individuals, which eventually cross in what we have defined as 'contact points'.

The first Kadi judgement by the Court of First Instance from 2005 was enough to raise awareness of the legal challenges that listing individuals would have created.⁷² Therefore, the Security Council decided to address the shortcomings of the listing process and established the Focal Point for De-listing with UNSCR 1730 (2006) and subsequently amended by UNSCR 1735 (2006) and 1822 (2008). This new office was tasked to review de-listing requests from individuals listed by sanctions committee established by the Security Council with the exception of ISIL (Da'esh), Al-Qaida and associated individuals. The Focal Point became a *trait d'union* between individuals and member states of the Security Council. The 2005 decision of the EU court pointed out that the listing process was in violation of several principles of due process, such as the right to be heard and effective remedy, so the Focal Point was an attempt to ensure that regional and national courts would not challenge the legality of the listings.⁷³ The main innovation was to allow the Focal Point to receive requests directly from petitioners, while previously listed individuals could have done so only via their states of residence or citizenship. This need was highlighted by the judgement of the Kadi case, which indicated that Kadi attempted to establish contact with the permanent

representation of Saudi Arabia at the UN, but with no success.⁷⁴ In general, the concern was that neither the state of origin nor the one of residence would have an interest to represent listed individuals, especially when listed precisely for alleged actions against their governments. On the one hand, stateless individuals could claim rights at the international level via the Focal Point, but on the other hand, the Security Council is still firmly in the driver's seat when it comes to making the final decision. In the 2008 Kadi judgement, the ECJ stated that the level of judicial review in place was not sufficient. As such, while the Focal Point departs from an international society of solely states, it lacks the level of formal institutionalization and regulatory framework to qualify as a 'contact point' as defined above. The next section shows how the creation of the Ombudsperson represents a departure from the Focal Point to qualify as a 'secondary contact point' between international and world society.

The emergence of a new 'secondary contact point': the Ombudsperson

The Focal Point is not responsible for the 1267 regime, which has been the first UN experience with extensive application of targeted sanctions. The 1267 regime is different from other sanctions regimes because targets had (as in the case of 'the Afghan faction known as the Taliban') and have (as in the case of members of Al-Qaida) weak state affiliations. It was often the case that states either did not show interest in individuals' concerns, as occurred to Kadi, or had an incentive not to represent individuals, such as the counter-terrorist listings as targets were considered dangerous for states as well. Thus, in the aftermath of the ECJ decision on Kadi, the Security Council established the Office of the Ombudsperson with UNSCR 1904 in 2009 in order to address the lack of judicial review of targeted sanctions.⁷⁵ The role of liaison between *stateless* individuals and the designating member states is central to qualify the Office of the Ombudsperson as a 'secondary contact point' between international and world society and to separate world society from cosmopolitan solidarism (which, as discussed above, relies on a statist ontology despite its human-centred goals).⁷⁶

The Office of the Ombudsperson receives the requests for de-listing of individuals who are listed under the 1267 regime and, since December 2015, members associated to ISIL/Da'esh.⁷⁷ Originally, the list included also the Taliban faction, but a dedicated sanctions regime was created for the Taliban in 2011.⁷⁸ Similar to the Focal Point, the Ombudsperson has a definite timeframe to conduct its review of delisting request as per Resolutions 2253 (2015), which revised UNSCR 1989 (2011), 2083 (2012) and 2161 (2015). From July 2010 to July 2017, the Office of the Ombudsperson received 78 requests for delisting, and completed 74 of them. This activity resulted in '57 petitions being granted and 17 denied. As a result [...], 52 individuals and 28 entities have been delisted and one entity has been removed as an alias of a listed entity'.⁷⁹ The Committee delisted three individuals before the Ombudsperson process and one petition was withdrawn.

The Ombudsperson enhances and brings forward practices that were introduced by the Focal Point if we look at *actors*, *rules* and *institutions* of a world society. In terms of

rules and *actors*, the Ombudsperson confirmed what had been already established by the Focal Point. When it comes to actors, states, individuals and the Ombudsperson all enjoy a degree of agency in the process. First, states do play a central role because they decide who to target when imposing sanctions. Indeed, a former Ombudsperson suggested that under the current scheme, it is highly unlikely that we will see individuals considered on equal grounds with states anytime soon, thus somehow reaffirming what is argued above – that is, that contact points emanate from states and from their interests.⁸⁰ However, once sanctions are imposed, individuals can trigger the process that can eventually overturn a decision of the Security Council and can determine the behaviour of the Security Council in setting new standards for imposing sanctions, thus balancing states' agency and exercising their right to quasi-judicial review.

At the same time, this analysis suggests that, despite weaknesses and elements that are unique to this specific type of quasi-judicial review, the Ombudsperson enjoys a degree of independence from both states (international society) and petitioners (world society), which makes it qualitatively different from the Focal Point. As such, the Ombudsperson constitutes a 'contact point' between international and world society.

First, the profile of the Ombudsperson ensures a certain degree of agency to the Office. According to resolution 1904, the Ombudsperson should be 'an individual high moral character, impartiality and integrity with high qualifications and experience in relevant fields, such as legal, human rights, counter-terrorism and sanctions', and it should exercise her function in 'an independent and impartial manner and shall neither seek nor receive instructions from any government'.⁸¹ This 'requirement' of independence is not necessary for the individual appointed as Focal Point for delisting. The outcome of the appointment of the Ombudsperson was the selection by the Secretary-General of individuals with very high international profiles: Kimberly Prost, formerly judge at the International Criminal Tribunal for the Former Yugoslavia (ICTY) from 2011 to 2015; Catherine Marchi-Uhel, formerly the Head of Chambers at the ICTY from 2015 to 2017; and Daniel Kipfer Fasciati since 18 July 2018, former President of the Federal Criminal Court of Switzerland.⁸² Although Prost and Marchi-Uhel had clearly a more international profile, the appointees were qualified to make recommendations based on legal grounds rather than on political ones.

Second, since 2011, the Ombudsperson does not share *observations* with the Security Council, but it *recommends* the Security Council to undertake certain actions, which empowered the Ombudsperson to tell the Security Council her or his view on the delisting requests instead of providing a vague overview of the legal conditions attached to the case of the petitioner.⁸³ While the Focal point provides more of a forum to exchange views between the petitioners (i.e. individuals and entities) and the reviewing states, the Ombudsperson can directly influence the decisions of the Security Council by providing independent assessments and recommendations on specific actions to be undertaken.

Third, while the Focal Point could only acquire information from member states, the Ombudsperson can operate independently from them. In many cases, 'substantial independent research' would be carried out, which included interviewing journalists, authors and, in a case, also the producers of a documentary.⁸⁴ This means that while the Office of the Ombudsperson does not approximate the powers of criminal prosecutions in

domestic legal systems, Kimberly Prost suggested that she acted more like an investigative judge in civil law systems.⁸⁵

Fourth, the Office of the Ombudsperson is *not* within the Security Council and/or the Secretariat. While the Focal Point is established within the Secretariat and it is dedicated to receive de-listing requests and to communicate it to the member states, the Ombudsperson is not within the Secretariat and should act ‘in an independent and impartial manner and shall neither seek nor receive instructions from any government’.⁸⁶ Diversely from the Focal Point, the Ombudsperson has a semi-independent budget and is explicitly mandated to be independent from member states (i.e. the Security Council) and the Secretariat.

Fifth, the *reverse consensus* procedure gives the Ombudsperson a strong bargaining position vis-à-vis the states. Since 2011, if the Ombudsperson recommends de-listing, then the Sanctions Committee can retain the listing only *by consensus*. If it is true that the Sanctions Committee can always decide to refer the matter to the Security Council, where the regular procedure would apply, it is also true that this has never happened and the Committee has never turned down a recommendation of the Ombudsperson to date. It is clear that the *reverse consensus* mechanism empowers the Ombudsperson vis-à-vis the Security Council, and we are not aware of other cases where this principle was established. *Reverse consensus* formalizes a classical mechanism of power separation, wherein powers are interdependent and control each other. Ultimately, states hold the last say, but a super majority is needed to overturn a recommendation from the Ombudsperson.

Finally, the Ombudsperson acts independently from the Security Council. This occurs because the Ombudsperson succeeded in building trust with both member states and petitioners by meeting and continually dialoguing with them. However, the meetings did not affect the independence of the Ombudsperson precisely because she would meet with all the parties. This dynamism has cemented the authority of the Office, so that its recommendations have never been challenged by the Council, and petitioners trust the Office in doing the review. Using the words of the former Ombudsperson, ‘The system works because states trusted the person in the position, both me and my successor’.⁸⁷ From exercising ‘limited independence’ at the beginning, the Ombudsperson has moved towards ‘assertive independence’ to establish legal standards for listing and de-listing procedures.

The Office of the Ombudsperson is theoretically comparable to the judiciary system in a separation of power framework because it is independent, yet *interdependent* with the Security Council. For instance, the UNSC can, eventually, reverse the recommendations of the Ombudsperson. However, confronting the Ombudsperson would entail high political costs for the UNSC, because it would be held liable for violating human rights of listed individuals. This balance, *de facto*, restrains the power of the UNSC as in line with the principles of the separation of power framework. However, *de jure*, the Security Council can decide to reassert its authority over the Ombudsperson. First, the mandate of the Office is renewed periodically, and therefore, the Security Council could theoretically decide not to have the Office any longer. Second, the high rate of acceptance of Ombudsperson’s recommendations could suggest that member states and the Ombudsperson tend to share objectives rather than balancing each other. Third, resources made available to the Office are still strongly linked to the wishes of the Security Council.

Without financial independence, the independence of the Ombudsperson could be more fragile than it has appeared so far. Finally, it is the Security Council that appoints the Ombudsperson, and this aspect could affect the functioning of the Office. For instance, the position remained vacant for 11 months from August 2017 to July 2018, and this delay could be explained either by need of the Security Council to reassert its centrality in the selection procedure or by disagreements that emerged in the selection procedures. The matter has been treated confidentially by the Security Council, and it is too early to find reliable information on this matter.

Conclusion

By relying on the evolution of the sanction policy of the UN, from comprehensive to targeted, and on the two innovations of the Focal Point and the Ombudsperson, the article has made the case for focusing on the intersection between world and international society, rather than on perpetuating pure analytical studies concerned solely with precise definitions of the former. The Ombudsperson example shows that the international society framework is not sufficient to understand what happens in the realm of targeted sanctions. On the one hand, individuals play a determinant role in the process, and, on the other hand, the practices associated to the Office and the role that states still play are also an indication that we do not yet live in a revolutionist world society of individuals *à la* Wight. If anything, they are symptoms of a tension 'between a potentially radical ontological re-characterization of world society as a society of humans and a desire to identify rules and practices that would make possible an adaptation of the dominant international society'.⁸⁸ Thus, the concept of 'contact point' that we have introduced is an important theoretical and analytical innovation that allows to make sense of the evolution of the targeted sanctions world, where specific actors, rules and institutions that belong to the *human* domain (rather than to that of *states*) represent a gradual but steady *integration* of elements of world society into an international society, in line with those authors who see coexistence between the two, as discussed in the literature review above.

Overall, this article enhances the ES and places it at the forefront of IR theories for understanding international political dynamics. Contrary to other realist and liberal theories, the ES elevates individuals to being full actors of international politics. Differently from other approaches, the ES conceives that states and individuals can and indeed do coexist and interact with each other on more equal grounds. The concept of 'contact point' crystallizes this relation, placing the ES among the few theories that offer analytical instruments to read the evolution of international politics in the twenty-first century.


The introduction of the 'contact point' as instances where responsibilities and rights are possessed by states *and* individuals bears empirical and analytical implications, which set the path for new avenues of research. For example, new empirical research may be done especially in regard to the search for more 'contact points' in international politics with efforts to classify them according to procedures, jurisdiction and strength of such organizations/bodies. At the same time, this article may encourage new analytical research, too. While through the case study on the Ombudsperson we have focused on a formal (secondary) institution and while we mentioned other formal institutions such as the International Court of Arbitration, the Permanent Court of Arbitration and, possibly, the Court of Justice

of the EU as additional examples of contact points, nothing prevents other scholars to theorize contact points in the form of ‘primary institutions’ by amending and revising the initial framework provided in this article. As noted above, the market, human rights and environmentalism may well lend themselves to be defined as ‘primary contact points’, that is, as those primary institutions that put together international and world society. In sum, we do hope that this first study on ‘contact points’ will encourage other scholars to contribute to their further theorization as well as to produce more analytical and empirical research on them by building on the conceptual work we have done in this article.

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Notes

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