

ARTICLE

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# Consuming International Law: Towards an Experimental Research Agenda for Understanding the Effects of Corporate International Humanitarian Law Violations on Consumer Buying Behavior

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## Abstract

The focus of international humanitarian law scholarship, and that of international law more broadly, has traditionally taken a state-centric focus, for good reason. Moreover, the age-old question of “does international law work” is explored through the rubric of state and, more recently, corporate-level compliance. Such endeavors, however, overlook a set of participants in international law: The individual. Diffusion of international law norms through the general populace is a valuable goal in itself, but by leveraging their decision-making as consumers, it may also play an important role in inducing greater compliance by companies and states. This is acknowledged by the proliferation of consumer boycott campaigns, country-of-origin labeling requirements, and increased demands for corporate transparency. However, little is known about whether international law influences consumer choices. Using international humanitarian law as an illustrative example, this article contends that international legal scholarship should be expanded to include the consumer within its ambit, and that one promising pathway to do so is through greater uptake of the methodological approaches and insights offered by behavioral economics.

**Keywords:** international humanitarian law; behavioral economics; behavioral international law; international law; consumer choice; decision-making; experiments

## A. Introduction

*“Der Kunde ist König.”*

*“The customer is always right.”*

Scholars and students of international law have constantly struggled with the classic concerns of whether or not international law is effective, and how to assess its effect. This article elaborates a

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novel approach to tackling the perennial questions “Does international law work?” and “is international law effective?” Existing studies examining the effectiveness, compliance with or value of international law focus on the impacts upon state behavior. While not discounting this, this article contends that this traditional approach is limited and incomplete. Instead, this article focuses on an entirely different set of subjects and approach for examining international law’s impacts: Everyday consumers. It contends that consumer-choice experiments that integrate the insights of behavioral economics can provide valuable learnings of how international law affects individual behavior and, through those findings, contribute to a deeper understanding of the influence and ultimate effectiveness of international law as a normative regime.

By broadening our understanding of the addressees of international law beyond the sovereign state to non-state actors, such as individuals and businesses we derive substantial conceptual and practical benefits. One of the prime advantages of viewing individuals as recipients of international law and participants in international legal processes is that this opens up new avenues for studying international law through experimental methodologies and behavioral economic theories, which focus on individual decision-making rather than state action. Applying these innovative approaches to the study of international law will contribute a new perspective, and new data, to our collective response to the enduring concerns of ensuring international law is both effective and impactful, while also identifying pathways for improvement.

The consumer experimental agenda for international law laid out herein builds upon the ideas and methodologies of behavioral economics and consumer research to provide new insights into how international law messages are received by individual consumers and how that information impacts everyday decisions to purchase consumer products. By doing so we can measure the permeation of international law messages to the general public. This research will assist in validating whether consumer behavior is indeed swayed by credible allegations of international law violations on the part of companies, and the limits of that influence. Significantly, with consumers as the experimental participants, we overcome an oft-cited critique of “behavioral international law” that suggests behavioral techniques are ill-suited to the study of international law.

While it is contended that various areas of international law may be conducive to consumer-based experimentation and would benefit from an assessment of their impact on individual—as opposed to state—behavior, to illustrate the utility and contours of such an approach the article focuses on international humanitarian law (IHL) and assesses the impact of IHL violations of individual consumer’s purchasing decisions.

IHL was selected due to the gravity of IHL violations in the panoply of international laws. IHL—otherwise known as the laws of armed conflict—is a specialized area of international law designed to regulate conduct in situations of armed conflict – including business activities.<sup>1</sup> Grave violations of IHL amount to war crimes,<sup>2</sup> and are some of the most egregious conduct proscribed by international law. While human rights abuses, including those committed by companies, all too routinely occur, few rise to the level of an international crime.<sup>3</sup> By narrowing the experimental focus to the influence of grave violations of IHL on consumer decision-making, we can establish a benchmark for other areas of international law and their influence on consumers. While motivations of consumers certainly vary, there is surely a threshold of the type of

<sup>1</sup>Jonathan Kolieb, *Don’t forget the Geneva Conventions: Achieving Responsible Business Conduct in Conflict-Affected Areas Through Adherence to International Humanitarian Law*, 26 AUSTRALIAN J. HUMAN RIGHTS 142, 142–164 (2020). See also JONATHAN KOLIEB & FAUVE KURNADI, DOING RESPONSIBLE BUSINESS IN ARMED CONFLICT RISKS, RIGHTS AND RESPONSIBILITIES (2020).

<sup>2</sup>ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, arts. 6–8, July 17, 1998, 2187 U.N.T.S. 90.

<sup>3</sup>*Id.*

international law violations that will influence their decision-making; grave IHL violations are allegations of corporate international *criminality*; if these have little to no impact on consumer behavior then, all things being equal, it is likely that little else will. This is another hypothesis that one could reasonably proffer and test in later experiments.

Significantly, ensuring greater corporate compliance with IHL in conflict-affected areas is emphasized by leading global governance regimes, including the seminal United Nations' Guiding Principles on Business and Human Rights (2011) and the UN Working Group on Business and Human Rights.<sup>4</sup> Another reason for the focus on IHL violations is that to date there have been no comparable experiments assessing the impact of IHL on consumer purchasing. Researchers have conducted experiments on ethical consumerism—such as the influence of “fair-trade” and “organic” labelling, and the green credentials of companies on consumer purchasing behavior, but none have examined the influence of IHL on consumers.<sup>5</sup>

Moreover, there is a diverse range of consumer products that are produced in conflict-affected areas, where IHL applies, or by companies accused of violating IHL. Such goods include: clothes produced with cotton from the disputed Kashmir region or from Xinjiang Province of China where the Chinese authorities are accused of mass incarceration, slave labor, and even genocide against the Uighur Muslim population;<sup>6</sup> products sourced from Israeli settlements in occupied Palestinian territory such as Dead Sea cosmetics, wine and agricultural produce;<sup>7</sup> mobile phones containing “conflict minerals” sourced from the Democratic Republic of Congo;<sup>8</sup> “blood diamonds” sourced from western Africa;<sup>9</sup> and rubies and “genocide gems” sourced from military-controlled companies in Myanmar being sold in jewelry stores.<sup>10</sup> Experiments could—and should—be conducted with products from different conflicts to assess the impact of each on individual consumer decision-making. To deepen our understanding of whether IHL is effective, we

<sup>4</sup>Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations' Protect, Respect and Remedy' Framework*, Human Rights Council, U.N. Doc. A/HRC/17/31 (2011); Guiding Principle 7 and commentary, *Commentary to Guiding Principle 12*, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf) (2021). See also Jonathan Kolieb, *Don't Forget the Geneva Conventions: Achieving Responsible Business Conduct in Conflict-Affected Areas Through Adherence to International Humanitarian Law*, 26 AUSTRALIAN J. HUMAN RIGHTS 142, 142–164 (2020); U.N. Working Group on Business and Human Rights, *Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc A/75/212 (2020); Human Rights Council Res. A/HRC/17/32 (May 27, 2011); *The Voluntary Principles on Security and Human Rights*, VOLUNTARY PRINCIPLES INITIATIVE (2019), <http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/TheVoluntaryPrinciples.pdf>; JONATHAN KOLIEB & FAUVE KURNADI, SEVEN INDICATORS OF CORPORATE BEST PRACTICE IN INTERNATIONAL HUMANITARIAN LAW (2021).

<sup>5</sup>Felix Katt & Oliver Meixner, *A Systematic Review of Drivers Influencing Consumer Willingness to Pay for Organic Food*, 100 TRENDS IN FOOD SCIENCE AND TECHNOLOGY 374, 374–88 (2020); Andrea Moser, *Buying Organic - Decision-Making Heuristics and Empirical Evidence from Germany*, 33 J. CONSUMER MKTG. 552, 552–61 (2016); Bipul Kumar, Ajay Manrai & Lalita Manrai, *Purchasing Behaviour for Environmentally Sustainable Products: A Conceptual Framework and Empirical Study*, 34 J. RETAILING & CONSUMER SERVS. 1, 1–9 (2017); Laura Lavorata, *Influence of Retailers' Commitment to Sustainable Development on Store Image, Consumer Loyalty and Consumer Boycotts: Proposal for a Model Using the Theory of Planned Behaviour*, 21 J. RETAILING & CONSUMER SERVS. 1021 (2014).

<sup>6</sup>See, e.g., *Rights Experts Concerned About Alleged Detention, Forced Labour of Uyghurs in China*, UN NEWS, Mar. 29, 2021, <https://news.un.org/en/story/2021/03/1088612>; *UN Rights Chief Decries Abuses in Xinjiang, Arrests in Hong Kong*, AL JAZEERA, Feb. 27, 2021, <https://www.aljazeera.com/news/2021/2/27/un-rights-chief-decries-abuses-in-xinjiang-arrests-in-china>; Robin Emmott & David Brunnstrom, *West Sanctions China Over Xinjiang Abuses, Beijing Hits Back at EU*, REUTERS, Mar. 23 2021, <https://www.reuters.com/article/uk-usa-china-eu-sanctions-idUSKBN2BE2LF>.

<sup>7</sup>See, e.g., Rep. of the Human Rights Council, U.N. Doc. A/HRC/43/71 (2020).

<sup>8</sup>See, e.g., *Conflict Minerals in Eastern Congo*, GLOBAL WITNESS, Mar. 2, 2015, <https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-eastern-congo/>.

<sup>9</sup>KIMBERLEY PROCESS, <https://www.kimberleyprocess.com/en/what-kp> (last accessed Aug. 10, 2021); Aryn Baker, *Blood Diamonds*, TIME, <https://time.com/blood-diamonds/> (2015).

<sup>10</sup>Sheridan Prasso, *Will Myanmar's Genocide Gems Become the New Blood Diamonds?*, BLOOMBERG NEWS, Oct. 17, 2018, <https://www.bloomberg.com/news/articles/2018-10-17/will-myanmar-s-genocide-gems-become-the-new-blood-diamonds>.

need to head not to the battlefield and examine troop conduct, but to the supermarket to examine consumer conduct.

The article continues below in Part B by outlining the rationale for integrating the individual consumer as an addressee of international law to inform our understanding of whether international law, in general, and IHL, in particular, work. The most prominent scholarly responses to this fundamental question in the international legal literature share a state-centric understanding of international law, and as a result, lack an examination of the impact of international law on lay-persons, including in their everyday societal role as consumers. Part C proposes an experimental research agenda—informed by existing consumer and behavioral research—to examine the impact of IHL on consumer purchase decisions. The Article concludes in Part D with some final observations as to the promise and potential of consumer experiments to advance our understanding of international law and improve its adherence and real-world impact.

## B. Situating the Consumer in International Law

There are both conceptual and practical reasons for integrating consumers more clearly into processes of examining, and enhancing, the effectiveness of international law.<sup>11</sup> The inclusion of individual consumers into the study of international law is an acknowledgment of the shift away from an outdated state-centric conception of international law, and allows for a more complete understanding of the mechanisms of international law—its creation, development and entrenchment, as well as its enforcement and compliance across a diversity of actors, including companies and individual people.<sup>12</sup>

### I. Expanding Our Conception of International Law and How It Works

Scholars from legal and international relations disciplines have sought to understand to what extent international law matters.<sup>13</sup> From Louis Henkin's oft-repeated dictum that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time" to Andrew Guzman's rational "Three Rs of compliance" the question of whether international law works is a classic, perennial concern that is still debated to this day.<sup>14</sup> This question has been the subject of much conjecture and writing. Eminent theorists such as Beth Simmons, Thomas Franck, Oona Hathaway, Harold Koh, Anne-Marie Slaughter, and Andrew Guzman have all made important contributions to this debate.<sup>15</sup>

Scholars differ in their assessments, yet they all have one feature in common: a focus on state behavior, state action as a basis for assessing the effectiveness of international law.<sup>16</sup> One need only go to the titles and subject matters of the aforementioned studies to note that it is invariably a

<sup>11</sup>Robert Keohane & David Victor, *The Regime Complex for Climate Change*, 9 PERSPS. ON POL'Y 1 (2011).

<sup>12</sup>See, e.g., NON-STATE ACTORS IN INTERNATIONAL LAW (Math Noortmann, August Reinisch, & Cedric Gyngaert eds., 2015); PARTICIPANTS IN THE INTERNATIONAL LEGAL SYSTEM: MULTIPLE PERSPECTIVES ON NON-STATE ACTORS IN INTERNATIONAL LAW (Jean D'Aspremont ed., 2011); Jordan Paust, *Non-State Actor Participation in International Law and the Pretense of Exclusion*, 51 VA. J. INT'L. L. 977 (2011).

<sup>13</sup>Doug Cassel, *Does International Human Rights Law Make a Difference*, CHI. J. INT'L. L. 121 (2001); Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT'L. ORG. 175 (1993).

<sup>14</sup>LOUIS HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* 47 (2d ed., 1979); ANDREW GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008).

<sup>15</sup>Beth Simmons, *Compliance with International Agreements*, 1 ANN. REV. POL. SCI. 75 (1998); Beth Simmons, *Why Comply With the Public International Law of Money?*, 25 YALE J. INT'L. L. 323 (2000); Thomas Franck, *Legitimacy in the International System*, 82 AM. J. INT'L. L. 705 (1988); Oona Hathaway, *Do Human Rights Treaties Matter?*, 111 YALE L.J. 1935 (2002); Harold Koh, *Why Do Nations Obey International Law?*, 106 YALE J. INT'L. L. 2599; Anne-Marie Slaughter, *A Liberal Theory of International Law*, 94 AM. SOC'Y INT'L. L. PROCS. 240 (2000).

<sup>16</sup>Shima Baradaran, Michael Findley, Daniel Nielson, & J.C. Sharman, *Does International Law Matter?* 97 MINN. L. REV. 743, 747 (2013).

state-centric analysis, asking: How do *nations* behave, why do *nations* observe international law?<sup>17</sup> As an example, Matthew Evangelista and Nina Tannenwald sought to investigate “Do the Geneva Conventions Matter?”—and named their 2017 edited volume with that same question. Despite the fact that the Geneva Conventions, and IHL more generally, are understood to regulate individual conduct,<sup>18</sup> the book’s contributions were all devoted to examining whether the Geneva Conventions mattered in the context of adherence—or lack thereof—by state actors—governments and militaries—engaged in armed conflict.<sup>19</sup>

There are two dominant schools of thought on why compliance is achieved and how international law works: The rationalists and constructivists. Rationalists assert that it is self-interest that prompts compliance with international law.<sup>20</sup> It comes down to a desire to realize gains and avoid threats of harm. Those gains could be material benefits such as increased foreign trade and investment, or strengthened national security. The harms could take the form of sanctions, reprisals, or reputational damage.<sup>21</sup> Constructivism, in turn, asserts that compliance to international law is achieved not because of any consequence—or aversion to a consequence—but rather because of what international law embodies: A series of norms that are reflective of widely-embraced moral and social commitments.<sup>22</sup> Chayes and Chayes’ managerialist model is a prominent example of a theory of international law compliance—that borrows from both rationalist and constructivist approaches.<sup>23</sup> They claim that states *want* to comply with international law due to international law’s normative effect and that non-compliance results from possessing insufficient information or from the high cost of compliance.<sup>24</sup> Yet here too, it is important to note the Chayes’ approach suffers from the same deficiency as other compliance theories: A focus on *states* and why *states* comply with international law.

The state-centric nature of the answers to “does international law work” are understandable. For much of its history, and even today, a state-centric view of international law predominated. Traditionally, international law was known as the “law of nations,” and a traditional understanding of whom were the subjects of this system of law is similarly state-centric. As Crawford put it “it is as well to remember the primacy of states as subjects of the law.”<sup>25</sup> Principally, it is states that have the capacity to participate in international law-making and to resolve disputes, and it is states that have immunities from national jurisdictions.<sup>26</sup> Oftentimes the discussion also shifts to a prosaic discussion of who possesses an international legal personality, and who does not. Even the way we refer to “non-state actors”—as Philip Alston has observed—is a technique to devalue those actors in contrast to state actors in international law. It diminishes their worth in the international legal system and creates hierarchy.<sup>27</sup>

<sup>17</sup>See, e.g., Koh, *supra* note 15. See also Veronika Fikfak, *Changing State Behaviour: Damages Before the European Court of Human Rights*, 29 EUR. J. INT’L L. 1091 (2018).

<sup>18</sup>Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), August 12, 1949, 75 U.N.T.S. 287, art 144 (“[T]he High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population. Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.”).

<sup>19</sup>DO THE GENEVA CONVENTIONS MATTER? (Matthew Evangelista & Nina Tannenwald eds., 2017).

<sup>20</sup>Guzman, *supra* note 14.

<sup>21</sup>JACK GOLDSMITH & ERIC POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2006).

<sup>22</sup>Hathaway, *supra* note 15, at 477.

<sup>23</sup>ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995).

<sup>24</sup>Emeka Duruigbo, *International Relations, Economic and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems*, 31 CALIF. WESTERN INT’L L. J. 177, 197 (2001).

<sup>25</sup>JAMES CRAWFORD, *BROWNLI’S PRINCIPLE OF INTERNATIONAL LAW* 116 (9th ed., 2019).

<sup>26</sup>*Id.* at 115.

<sup>27</sup>Philip Alston, *The ‘Not-A-Cat’ Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?*, in *NON-STATE ACTORS AND HUMAN RIGHTS* 3–4, 12–20 (Philip Alston ed., 2005).

The statist approach to international law is outdated and fails to reflect the realities of the world as it is. Relatedly, the debate around whether international law works is reaching a dead-end. The state-centric conception of international law is being challenged by more expansive and inclusive understandings of international law that are reflective of the diversity of participants in international law-making and observance. Advanced by the likes of Rosalyn Higgins, Math Noortman, and others, participant-based theory of international law makes room for non-state actors such as companies, non-governmental organizations, and even individuals as recognized stakeholders in the international law project.<sup>28</sup>

One of the pioneers of the New Haven School, Myres McDougal, employed the term “participant” when referring to actors in international law.<sup>29</sup> As far back as 1953, he noted that international law was essentially “blind” to non-state participants.<sup>30</sup> Seemingly, he well understood what Baradaran et. al. observed six decades later that “focusing on states as the primary actors in international law does not accurately reflect the effectiveness of international law.”<sup>31</sup> Rosalyn Higgins, former judge of the International Court of Justice also famously rejects the positivist, statist approach to international law: “We have erected an intellectual prison of our own choosing and then declared it to be an unalterable constraint.”<sup>32</sup> Higgins asserted that international law has not subjects and objects, but rather “only participants.”<sup>33</sup> Such participants include individuals, international organizations, multinational corporations, and private non-governmental groups. Andrew Clapham also advocates for welcoming the range of non-state actors into our international legal frame, suggesting we need to see international law not only in terms of obligations for governments but also for non-state actors.<sup>34</sup> It is important to note, however, that participation does not connote equal rights and responsibilities under international law.

This shift to recognition of non-state actors within international law also reflects an attempt to circumvent legal formalism. While the rationale for a state-centric focus may well be critical for questions around jurisdiction and international legal personality, for broader, law-and-society questions—for instance, whether international law works—it has lost steam.<sup>35</sup> The myopic understanding of *whose* compliance to international law should be evaluated fails to capture a thorough appreciation of the complexity of the international legal regime, including the diversity of actors already involved in international law-making in a formal and informal sense, and contributing to compliance with its rules.<sup>36</sup>

## II. Consumer as Legitimate Participants and Law-Takers in International Law

The norms and provisions of international law are not exclusively addressed to states—nor exclusively created by states. IHL for example, is intended to regulate individual conduct on the battlefield.<sup>37</sup> International trade law intends to regulate companies,<sup>38</sup> and human rights law recognizes the inalienable rights of individuals that must be protected by states.<sup>39</sup> While the obligation-holder

<sup>28</sup>ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 50 (1994); Noortmann, *supra* note 12; D’Aspremont, *supra* note 12.

<sup>29</sup>Myres McDougal, *International Law, Power and Policy: A Contemporary Conception*, 82 RECUEIL DES COURS 137 (1953).  
<sup>30</sup>*Id.* at 162.

<sup>31</sup>Baradaran et al., *supra* note 16, at 761.

<sup>32</sup>Higgins, *supra* note 28, at 9.

<sup>33</sup>*Id.*

<sup>34</sup>ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 83 (2006).

<sup>35</sup>Jean d’Aspremont, *The Politics of Deformalization in International Law*, 3 GOETTINGEN J. INT’L. L. 503, 503–50 (2011).

<sup>36</sup>INFORMAL INTERNATIONAL LAWMAKING (Joost Pauwelyn, Ramses Wessel, & Jan Wouters eds., 2021).

<sup>37</sup>*What is International Humanitarian Law? Factsheet*, INTERNATIONAL COMMITTEE OF RED CROSS, July 2004, [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf).

<sup>38</sup>*What is the WTO?*, WORLD TRADE ORGANIZATION, Aug. 10, 2021, [https://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm).

<sup>39</sup>*See, e.g.*, International Covenant on Civil and Political Rights Dec. 16, 1966, 999 U.N.T.S. 171.

often remains the state, international legal agreements have direct impact on the conduct of companies and individuals; they impact how these actors view themselves, and the rights and obligations they possess vis-à-vis one another.

In that sense, a thorough answer to the questions “does international law work?” and “is international law effective?” must also assess its impact on other actors, including individuals.<sup>40</sup> By focusing on the individual it provides further insights into why and how compliance with international law is achieved. As Baradaran et. al. noted, to be effective in achieving its goals, international law will require “sub-state entities act[ing] consistently” with them.<sup>41</sup> While the obligations of international law are addressed to states, it is individuals within states that will ultimately “determine whether international law is effective.”<sup>42</sup>

Individuals engage with international law in many social settings. It may constitute part of their personal politics, views on foreign policy or global issues. It may color one’s view of a certain country’s behavior. So, what effect does international law have on individuals? One way to assess this is examining one engagement point between individuals and international law: The supermarket aisle.

As consumers, we are bombarded with choices. Every day in supermarkets and department stores around the world individuals make consumer decisions—choosing to buy a certain product over another. Consumer decision-making research is a rich field of research that explores this moment of choice. It has developed and applied theories and methodologies to better understand how individual decision-making is influenced in the consumer setting.<sup>43</sup> Research on behavioral economics biases is a key area within this field, including assessing the impacts of product labelling on consumer decision-making.<sup>44</sup> Manufacturers add various labels to their products to signal to consumers that their products align with their ethical, nutritional or dietary choices. But are these labels actually effective? A significant amount of research has gone in to examining this question.<sup>45</sup> Similar experiments could and should be conducted with regard to the impact of international law on consumer decision-making.

Individuals are participants in the international legal system, and consumers are one guise of an individual. Bridging the consumer-choice literature with international law will provide insights into the permeation of international law into an individual’s decision-making and make a novel contribution to the question of whether international law works.

In the supermarket aisles, the probability of the adverse consequences or potential material benefits to international law compliance that are so significant for traditional rationalist understandings of whether international law works, are moot. The only proximate consequence of a consumer’s decision-making is whether or not they go home with a purchase. Therefore, it is possible to develop experiments examining consumer decision-making in order to derive insights into if, and to what extent, people’s choices reflect respect for international law, and test the validity of the constructivist reasoning for adherence, outlined earlier.

### III. Consumers as Levers of Corporate International Law Compliance and Accountability

There are continuing and growing calls—by academia, governments, and civil society organizations alike—for businesses to respect and uphold international law. Prominent amongst these efforts is the increasing push with regard to the human rights responsibilities of business.

<sup>40</sup>KATE PARLETT, *THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM* (2011).

<sup>41</sup>Baradaran et al., *supra* note 16, at 747.

<sup>42</sup>*Id.*

<sup>43</sup>James Bettman, Eric Johnson & John Payne, *Consumer Decision Making*, in *HANDBOOK OF CONSUMER BEHAVIOR* 50 (Thomas Robertson & Harold Kassarian eds., 1991).

<sup>44</sup>Lucia Reisch & Min Zhao, *Behavioural Economics, Consumer Behaviour and Consumer Policy: State of the Art*, 1 *BEHAV. PUB. POL’Y* 190, 190–206 (2017).

<sup>45</sup>Katt et al., *supra* note 5; Moser, *supra* note 5; Kumar et al., *supra* note 5.

Litigation and even criminal prosecutions against corporate human rights abusers have occurred in increasing frequency in the past few decades,<sup>46</sup> and the 2011 unanimous endorsement by the UN Human Rights Council of the *United Nations' Guiding Principles on Business and Human Rights* has elevated these efforts into the mainstream of global governance conversations.<sup>47</sup> Legislation at the national level, such as France's "duty of vigilance" law, Germany's "Supply Chain Due Diligence Act," the U.K. and Australia's "Modern Slavery Acts" and the U.S.'s conflict minerals legislation have added domestic legal compliance mechanisms into the mix as well.<sup>48</sup> The demands on companies to respect international human rights law looks set to increase.<sup>49</sup> The incorporation of businesses into other global legal and governance regimes also continues apace.<sup>50</sup> For their part, many leading businesses—including consumer apparel and product manufacturers—have responded with increasing commitments to respect human rights within their corporate culture and practices. This is evidenced by the large number of multinational companies that support the UN Guiding Principles and other multi-stakeholder human rights instruments and communities of practice, including the UN Global Compact.<sup>51</sup>

Everyday consumption can be a powerful lever to encourage greater corporate adherence to human rights and other norms enshrined in international law. Neilson, Scammell and Hertz have noted that everyday consumption can be viewed as a "meaningful form of civic engagement,"<sup>52</sup> and Risse, Ropp, and Sikkink have drawn attention to the significance of the diffusion of international legal norms—such as human rights—into the corporate sector to achieve greater compliance amongst companies *and* states.<sup>53</sup> However, the complex value chains of global businesses means that everyday consumers are often disconnected from the source and means of production that often takes place in a different country and context. This has made consumers a key target group for social campaigns by NGOs and civil society organizations aiming at changing corporate behavior. In 1990, *The Economist* noted that "Consumer boycotts are becoming an epidemic for one simple reason: they work."<sup>54</sup> Notably, the scholarly literature is still mixed on whether boycotts are effective in achieving their—often political—objectives.<sup>55</sup> Nevertheless, it is well established that consumer behavior, including boycotts, can impact and alter business behavior.<sup>56</sup> This is a truism underlying

<sup>46</sup>See, e.g., Andrea Heaton, Maysa Zorob, & Stephanie Regalia, *Corporate Human Rights Litigation: Trends From 200 Seminal Lawsuits*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, Dec. 8, 2020, <https://www.business-humanrights.org/en/blog/corporate-human-rights-litigation-trends-from-200-seminal-lawsuits/>.

<sup>47</sup>Ruggie, *Guiding Principles*, *supra* note 4.

<sup>48</sup>Rachel Chambers & Anil Yilmaz Vastardis, *Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability*, 21 CHI. J. INT'L L. 323 (2021).

<sup>49</sup>Human Rights Council, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (3d Revised Draft), August 17, 2021, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>.

<sup>50</sup>See, e.g., *17 Goals to Transform Our World*, UN GLOBAL COMPACT, <https://www.unglobalcompact.org/sdgs/17-global-goals>; Antonio Guterres, *Private Business Must be a 'Driving Force' for Securing Peace, Curbing Climate Change*, Sept. 24, 2018, <https://news.un.org/en/story/2018/09/1020342>.

<sup>51</sup>The UN Global Compact lists over 16,000 participants that have committed to the Global Compact, including 5597 companies. See *Our Participants*, UN GLOBAL COMPACT, <https://www.unglobalcompact.org/what-is-gc/participants>.

<sup>52</sup>Lisa Neilson, *Boycott or Boycott? Understanding Political Consumerism*, 9 J. CONSUMER BEHAV. 214, 214–27 (2010); Margaret Scammell, *The Internet and Civic Engagement: The Age of the Citizen-Consumer*, 17 POL. COMMUN 351, 351–55 (2000); Noreena Hertz, *Better to Shop Than to Vote?* 10 BUS. ETHICS: A EUR. REV. 190, 190–93 (2008).

<sup>53</sup>Thomas Risse, Stephen Ropp, & Kathryn Sikkink, *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* 204 (2013).

<sup>54</sup>*Boycotting Corporate America*, THE ECONOMIST, 69–70 (May 26, 1990).

<sup>55</sup>See, e.g., Maya Farah & Andrew Newman, *Socio-Cognitive Approach to Exploring Consumer Boycott Intelligence*, 63 J. BUS. RSCH. 347, 347–55 (2010); MONROE FRIEDMAN, *CONSUMER BOYCOTTS* (1999); Jill Klein, Craig Smith, & Andrew John, *Why We Boycott: Consumer Motivations for Boycott Participation*, 68 J. MKTG. 92, 92–109 (2004).

<sup>56</sup>*Id.*



extensive consumer research.<sup>57</sup> Insofar as businesses are now increasingly being called upon to respect international law—especially IHL and human rights law—understanding the impact of international law on consumers will provide valuable data to validate and strengthen those efforts.

#### IV. Translation of International Law Norms into Consumer Campaigns

Calls for boycotts of consumer goods are now commonplace in many countries. Boycotts are a “means by which consumers can influence business practices by refraining from purchase from firms that fail to behave in ‘socially responsible’ ways.”<sup>58</sup> Such consumer boycotts are prompted by a variety of political, religious and ethical concerns, but amongst those are also international law concerns. Allegations of genocide, war crimes and systematic human rights abuses have all been justifications for boycotts—now, and in the past.

In one of the first major boycott movements in recent history, Mahatma Gandhi, the non-violent leader of the mid-20th century Indian independence movement strongly advocated all Indians boycott certain British goods and stores.<sup>59</sup> These economic pressures contributed to the departure of the British from the sub-continent, and India’s independence in 1947. Perhaps the most “successful” consumer boycott campaign in recent decades was launched against the South African apartheid regime.<sup>60</sup> In response, to the repressive, racist policies of the South African government, a multi-faceted boycott campaign was launched in London in 1958 that called for consumers to refuse to buy South African goods.<sup>61</sup> This was followed in later years by countries also establishing trade boycotts.<sup>62</sup> Eventually, this economic pressure was a key contributor to the end of Apartheid in the early 1990s, culminating in the landmark 1994 free elections that saw Nelson Mandela elected President.<sup>63</sup>

A contemporary boycott campaign that has garnered a great deal of attention around the world is the Palestinian-led “Boycott-Divestment-Sanctions” (BDS) campaign against continued Israeli occupation of lands claimed by Palestinians to establish a sovereign state of their own.<sup>64</sup> The BDS campaign has several strands, with some calling for boycotts of all Israeli goods and services, while others advocate for boycotting of Israeli settlement products—due to “their complicity in the occupation of Palestinian lands and in contravention of international humanitarian law.”<sup>65</sup>

Similarly, in early 2021, major apparel manufacturers such as Adidas and H&M were confronted with a boycott campaign led by Oxfam and other civil society organizations over their sourcing of cotton from the Xinjiang province of China.<sup>66</sup> According to the campaign organizers, the cotton was produced using Uighur slave labour—a Muslim population the Beijing authorities have been accused by the UN and Western governments of perpetrating a genocide against.<sup>67</sup>

<sup>57</sup>Andrew John & Jill Klein, *The Boycott Puzzle: Consumer Motivations for Purchase Sacrifice*, 49 MGMT. SCI. 1196, 1202 (2003).

<sup>58</sup>*Id.*

<sup>59</sup>LOUIS FISCHER, *GANDHI: HIS LIFE AND MESSAGE FOR THE WORLD* (2010).

<sup>60</sup>Christabel Gurney, *A Great Cause: The Origins of the Anti-Apartheid Movement, June 1959-March 1960*, 26 J. S. AFR. STUD. 123, 123–44 (2000).

<sup>61</sup>NANCY CLARK & WILLIAM WORGER, *SOUTH AFRICA: THE RISE AND FALL OF APARTHEID* (3d ed., 2016).

<sup>62</sup>*E.g.*, Comprehensive Anti-Apartheid Act, Pub. L. No. 99-440, 100 Stat. 1086 (1986).

<sup>63</sup>CLARK et al., *supra* note 61.

<sup>64</sup>OMAR BARGHOUTI, *BDS: BOYCOTT, DIVESTMENT, SANCTIONS: THE GLOBAL STRUGGLE FOR PALESTINIAN RIGHTS* (2011).

<sup>65</sup>*See, e.g.*, *Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States Under International Law*, AL-HAQ, Jan. 17, 2013.

<sup>66</sup>*See, e.g.*, *Rights Experts Concerned About Alleged Detention, Forced Labour of Uyghurs in China*, UN NEWS, Mar. 29, 2021, <https://news.un.org/en/story/2021/03/1088612>.

<sup>67</sup>*See, e.g.*, STATE DEP’T, 2021 REPORT TO CONGRESS PURSUANT TO SECTION 5 OF THE ELIE WIESEL GENOCIDE AND ATROCITIES PREVENTION ACT OF 2018 (2021).

As these examples illustrate, consumer boycott campaigners often make their appeals in terms of international law. Boycotts are, for some, a way of translating international law norms—including IHL proscriptions—into tangible, political campaigns targeted at changing individual behavior in order to achieve greater compliance with international law on the part of States or companies. In our search to understand whether international law works it behooves us to consider whether international law *communication* mechanisms—like boycott campaigns targeting consumer behavior—work as well.

### V. Consumer International Law Research for More Impactful, Inclusive International Legal Regimes

A focus on the individual—in the guise of consumer—and embracing experimental methodology will not resolve once and for all why nations comply with international law, nor even why individuals may do so. Yet, it will evaluate the impact of international law on an every-day action that occurs countless times every day, in all corners of the globe. Consumer-international law experiments will provide meaningful data on the influence of international law on individual decision-making and provide insights into international law's permeation beyond formal government endorsements or even legislation.

Ultimately, international law like all governance regimes aspires to be ever more effective.<sup>68</sup> The aspirational goals, norms, and substantive provisions of international legal regimes such as the securing of human rights for all and protection of civilians during armed conflict cannot be achieved without their widespread diffusion and acceptance across society—including individuals and business.<sup>69</sup> Being able to assess and quantify the influence of international law on individual people's everyday behavior will assist in designing better attenuated international legal regimes in the future, and ultimately help in improving the effectiveness of international law for all.

### C. Integrating Consumer Research Methods with International Law

As shown above, our conception of international law is evolving to incorporate actors beyond the state. But our research methods have not kept apace. Another justification for integrating the consumer into international law is that once we do, it exposes international legal research to new lines of inquiry and allows for novel tools to do so, such as behavioral economics and empirical experiments, allowing us to gain new insights. A constraint that has heretofore prevented greater behavioral international law experimentation is our discipline's state-centric focus. This is overcome by adding the individual consumer as a legitimate focal point of enquiry.

Consumer behavioral research is a well-established field which has applied innovative methods and influential theories, such as Ajzen and Fishbein's *Theory of Planned Behaviour*.<sup>70</sup> However, consumer decision-making is a largely untrammelled domain for innovative experimentation in international law. How is international law received and digested by everyday people with no specialized knowledge, expertise, or professional roles? Consumer research techniques can assist in answering this question,<sup>71</sup> and allow a deeper appreciation of not how international law works in the halls of power and government, but in the homes and lives of people—the citizenry of the

<sup>68</sup>Keohane et al., *supra* note 11.

<sup>69</sup>Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L. ORG. 887, 887–917 (1998).

<sup>70</sup>See, e.g., Martin Fishbein & Icek Ajzen, BELIEF, ATTITUDE, INTENTION, AND BEHAVIOR: AN INTRODUCTION TO THEORY AND RESEARCH (1975).

<sup>71</sup>Eva van der Zee, *How Behavioural Law Can Promote Sustainable Development: An overview of the Potential and Challenges*, VOLKERRECHTSBLOG May 14, 2020, <https://voelkerrechtsblog.org/how-behavioural-law-can-promote-sustainable-development/>.

world. In turn, this will provide useful data as to how to craft more effective international legal regimes and how to effectively communicate international legal norms in the future.

### I. Experimenting with Behavioral International Law

Anne van Aaken observed as recently as 2020 that “insights from experimental psychology and economics have rarely been applied to the study of international law and never to the study of international legal theory.”<sup>72</sup> The consumer international law behavioral research outlined in this article answers the collective call for greater experimentation and greater application of behavioral economics in international law.<sup>73</sup>

As Jeffrey Dunoff and Mark Pollack contend “experiments . . . can deepen and extend our knowledge of international law’s workings and impacts.”<sup>74</sup> Adam Chilton and Dustin Tingley note that “experimental methods make it possible to make credible causal claims when it is frequently difficult to do so with observational data.”<sup>75</sup> Laboratory experiments are useful because the environment and variables can be controlled. If the experimental design is sound, measurable effects and changes in behavior are likely due to the deliberate variation in experimental treatments. This causal relationship allows for meaningful conclusions to be drawn.<sup>76</sup> Legal experiments have been conducted in other law fields, including environmental law,<sup>77</sup> but international law is a laggard in this regard. There is a noticeable dearth of experimental international law scholarship.<sup>78</sup> Van Aaken calls for “more tailor-made [behavioral] experiments” in international law.<sup>79</sup>

As early as the 1990s, legal scholars began contemplating the utility of a then relatively new field of economics: Behavioral economics. At its core, behavioral economics challenges the fundamental premise of traditional economics: That individuals act rationally.<sup>80</sup> Daniel Kahneman, together with his frequent collaborator, Amos Tversky, pioneered the field of behavioral economics decades earlier.<sup>81</sup> Through theory-building and experimental validation, Kahneman established that human judgement and decision-making is not always rational but informed by cognitive biases and heuristics. By understanding these psychological effects in individual’s thought processes, we gain a deeper, more accurate understanding of how humans’ think and make decisions. Kahneman won the Nobel Prize for Economics in 2004, and his 2011 *Thinking, Fast and Slow* remains a seminal text in the field of behavioral economics, and brought Kahneman’s life work to a non-academic audience.<sup>82</sup> Behavioral economics has influenced countless disciplines, and its insights are applied by governments and businesses to address a host of issues.<sup>83</sup>

<sup>72</sup>Anne van Aaken, *Experimental Insights for International Legal Theory*, 30 EUR. J. INT’L. L. 1237, 1237–62, (2019). See also Anne van Aaken & Tomer Broude, *The Psychology of International Law: An Introduction*, 30 EUR. J. INT’L L. 1224 (2019).

<sup>73</sup>Jeffrey Dunoff & Mark Pollack, *Experimenting with International Law*, EUR. J. INT’L L. (2018); Adam Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT’L L. 176, 188 (2013).

<sup>74</sup>*Id.*

<sup>75</sup>Chilton et al., *supra* note 73, at 188.

<sup>76</sup>*Id.* at 225.

<sup>77</sup>Yuval Feldman & Oren Perez, *How Law Changes the Environmental Mind: An Experimental Study of the Effect of Legal Norms on Moral Perceptions and Civic Enforcement*, 36 J. L. & SOC’Y. 501, 501–35 (2009).

<sup>78</sup>Chilton et al., *supra* note 73, at 191.

<sup>79</sup>Anne van Aaken, *Behavioral Aspects of the International Law of Global Public Goods and Common Pool Resources*, 112 AM. J. INT’L. L. 67, 79 (2018).

<sup>80</sup>Russell Korobkin & Thomas Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CALIF. L. REV. 1051 (2000); Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI. KENT. L. REV. 23 (1989). See also HANDBOOK OF BEHAVIORAL ECONOMICS – FOUNDATIONS AND APPLICATIONS (Douglas Bernheim, Stefano DellaVigna, & David Laibson eds., 2018); MORRIS ALTMAN, HANDBOOK OF CONTEMPORARY BEHAVIORAL ECONOMICS (2006).

<sup>81</sup>See, e.g., Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124 (1974); Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI. 453 (1981).

<sup>82</sup>DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).

<sup>83</sup>Francesca Gino, *The Rise of Behavioral Economics and Its Influence on Organizations*, HARV. BUS. REV., Oct. 10, 2017.

Richard Thaler and Cass Sunstein's *Nudge* has led the popularization of employing behavioral economic and psychological insights to the study and practice of law.<sup>84</sup> Bringing these fields together has progressed the understanding of how laws are developed, implemented, and violated.<sup>85</sup> In turn, these new learnings hold out the promise of being able to design and develop better laws and legal policies, and more effective means of deploying them.<sup>86</sup> Furthermore, the ideas of behavioral economics and law have been taken up by governments around the world. The U.K. and others have established "Nudge Units" to apply behavioral insights to law and public policy issues and to advise and support more effective implementation of their priorities.<sup>87</sup>

In the past decade, behavioral economics and experimental research methodologies have begun to be embraced by international law scholars too. Dunoff and Pollack's *Experimenting with International Law*, Van Aaken's *Behavioural International Law and Economics*, and Tomer Broude's *Behavioral International Law* are three influential guideposts in this regard.<sup>88</sup> These scholars call for laboratory-based experiments on behavioral economics effects to help understand individual's interactions with international law and to support design of more effective legal regimes.<sup>89</sup> As van Aaken observed, "the analysis of international law . . . can be enriched by applying insights into how people *really* behave."<sup>90</sup> For instance, data gleaned from experiments can provide valuable evidence supporting or disproving theories as to compliance and enforcement of international law.<sup>91</sup>

## II. From the Battlefield to the Supermarket: Assessing IHL's Impact

A key objection to the use of behavioral economics theories and methodologies to help understand international law is the focus on the individual. Critics suggest that this is not well-suited to an examination of state behavior in international law.<sup>92</sup> Even advocates for behavioral international law and experimentation have expressed uneasiness about this.<sup>93</sup> Anthropomorphizing States is simplistic and dangerous, and extrapolating with regard to state action based on individual behavior is perilous.<sup>94</sup> Even as empirical studies and experimentation have commenced in the field of international law, the focus remains on examining state behavior;<sup>95</sup> assessing the views of "elites" who oftentimes make international legal decisions—government officials, treaty negotiators or military officers, and indeed, anthropomorphizing "state behavior."<sup>96</sup>

<sup>84</sup>RICHARD THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS* (2008).

<sup>85</sup>Thomas Ulen, *The Importance of Behavioral Law*, in *THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW* (Eyal Zamir & Doron Teichman eds., 2014).

<sup>86</sup>*Id.* See also On Amir and Orly Lobel, *Stumble, Predict, Nudge: How Behavioral Economics Informs Law and Policy* 108 COLUM. L. REV. 2098 (2009).

<sup>87</sup>U.K. Prime Minister David Cameron established a Nudge Unit in 2010 in the Cabinet Office. <https://www.gov.uk/government/organisations/behavioural-insights-team>.

<sup>88</sup>Dunoff et al., *supra* note 73. Anne van Aaken, *Behavioral International Law and Economics*, 55 HARV. INT'L. L. J. 421 (2014); Tomer Broude, *Behavioral International Law*, 163 UNIV. PENN. L. REV. 1099 (2015).

<sup>89</sup>van Aaken, *supra* note 79, at 67.

<sup>90</sup>*Id.* at 69, (emphasis added).

<sup>91</sup>*Id.*

<sup>92</sup>Eva van der Zee, Veronika Fikfak, & Daniel Peat, *Introduction to the Symposium on Limitations of the Behavioral Turn in International Law*, 115 AM. J. INT'L. L. UNBOUND 237 (2021).

<sup>93</sup>See, e.g., Broude, *supra* note 87, at 1121; van Aaken, *supra* note 79, at 70; Chilton et al., *supra* note 73, at 193.

<sup>94</sup>Broude, *supra* note 88.

<sup>95</sup>See e.g., van Aaken, *supra* note 79; van Aaken, *supra* note 72.

<sup>96</sup>Jean Galbraith, *Treaty Options: Towards a Behavioural Understanding of Treaty Design*, VA. J. INT'L. L. 309 (2013). See e.g., Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. OF INT'L. L. 1 (2012). A notable exception to this is: Geoffrey Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 INT'L. ORG. 105, 105–140 (2013).

Broude and Levy highlighted this concern and, in response, advanced a research agenda focused on assessing “individual international humanitarian law decision-making.”<sup>97</sup> Broude and Levy’s research focused on unearthing behavioral insights with regard to outcome bias in IHL-related investigations, concentrating on the traditional recipients of IHL training and messaging—soldiers, commanders and legal counsel and on assessing the traditional subject-matter of IHL—the proportionality and reasonableness of military operations.<sup>98</sup> Shiri Krebs extended this focus further on to individuals with a 2017 survey experiment on the impact of people’s willingness to believe the veracity of reports of war-time events when legal labels such as “war crimes” were used to describe them.<sup>99</sup>

With a focus on the consumer—the “every-person”—in behavioral international law, the research agenda laid out herein follows Broude and Levy’s approach and *extends* it in crucial ways. With a focus on individual *consumers’* international law decision-making, the critique of behavioral international law research dissipates. The “black box” of state decision-making is not the subject of this research agenda, but rather individual consumer decision-making—familiar terrain for behavioral economists and experimentation. Through behavioral experiments the impact of IHL on individual decision-making can be discerned, not on the *battlefield*, but in the *supermarket aisle*: Do allegations of participation in war-crimes make a difference to a consumers’ inclination to purchase a company’s product?

### III. Illustrating Possible Behavioral Insights in International Law Research

Consumers’ views and decisions are influenced by access to information, political identity, and peer-group norms.<sup>100</sup> It is, however, difficult to credibly measure consumers’ views on the legal, political and social implications of the manufacturing process and country-of-origin status; surveys suffer from hypothesis bias because people do not have to take actions that are consistent with their stated views, and people may feel uncomfortable revealing controversial views in interviews.<sup>101</sup> Behavioral experimental methodologies make it possible to explore the influence of international law on individuals through large-scale experiments.<sup>102</sup> Through slight variations in experimental methods, the impact of various psychological effects and biases identified by behavioral economists on consumers’ purchasing decisions can be tested.

The moment of choice for a typical consumer in a retail store can be classified as “choice under certainty.” Once the consumer assesses the options and makes a choice—there is no doubt as to the outcome of the choice they will make—all things being equal, the consumer will purchase the product. The behavioral economics literature has highlighted several psychological factors and heuristics—mental short-cuts that assist individuals in making decisions under such circumstances.<sup>103</sup> Heuristics help people make decisions about facts, and also morals and ethics.<sup>104</sup> How consumers utilize heuristics can be tested and provides valuable insights into how consumers engage with international law messaging.<sup>105</sup>

<sup>97</sup>Tomer Broude & Inbar Levy, *Outcome Bias and Expertise in Investigations Under International Humanitarian Law*, 30 EUR. J. INT’L. L. 1304.

<sup>98</sup>*Id.*

<sup>99</sup>Shiri Krebs, *Law Wars: Experimental Data on the Impact of Legal Labels on Wartime Event Beliefs*, 11 HARV. NAT’L. SEC. J. 106 (2020).

<sup>100</sup>FLIP DU PLESSIS & DEON ROUSSEAU, *BUYER BEHAVIOUR: UNDERSTANDING CONSUMER PSYCHOLOGY AND MARKETING* 6 (4th ed., 2008).

<sup>101</sup>van Aaken, *supra* note 72.

<sup>102</sup>Chilton et al., *supra* note 73.

<sup>103</sup>*Id.*

<sup>104</sup>CASS SUNSTEIN, *MORAL HEURISTICS* (John M. Olin Program in Law and Economics Working Paper No. 180, 2003).

<sup>105</sup>NICK WILKINSON & MATTHIAS KLAES, *AN INTRODUCTION TO BEHAVIORAL ECONOMICS* 115 (2d ed., 2012); DANIEL KAHNEMAN, PAUL SLOVIC & AMOS TVERSKY, *JUDGEMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* (1982); Herbert A. Simon, *Invariants of Human Behaviour*, 41 ANN. REV. PSYCH. 1, 1–19 (1990).

The following sections outline an experimental research agenda testing the effect of IHL on consumer decision-making. Several prominent heuristics and psychological biases, and related research questions, are proffered. An appreciation of how various effects and biases, as illustrated here with the anchoring effect, menu dependence, representativeness bias, and social context, affect consumer purchase decisions with regard to products sourced from conflict-affected regions will provide valuable data on how individuals receive and digest IHL.<sup>106</sup> By investigating the effect of these heuristics in consumer purchasing scenarios we can glean deeper insights into how such international law-messages should be communicated to elicit positive responses. Behavioral economics experimentation on consumers can provide insights to improve the efficacy and effectiveness of IHL, and other related international law and governance regimes. Additionally, the results may inform corporate decision-making regarding doing business in conflict-affected areas.

### 1. Anchoring Effect and the Influence of Product Labelling

The anchoring effect is the psychological bias employed in individual decision-making wherein some people's decisions or actions are swayed towards pre-established points of reference they are familiar with, regardless of how relevant or irrelevant that "anchor" may be to the decision at hand.<sup>107</sup> Thaler and Sunstein provide a humorous yet effective example of this effect: Amsterdam's Schipol Airport placed images of flies on the urinals in their bathrooms in an effort to reduce "spillage." The anchor worked, reducing spillage by eighty percent at those urinals.<sup>108</sup>

In consumer research, it is posited that labels can provide powerful anchors—points of reference—that can sway consumer attitudes towards a certain product.<sup>109</sup> "Country-of-origin" labelling is a common practice in international trade, and for food products, and several countries have made country-of-origin labelling mandatory.<sup>110</sup> Many producers see the labels as adding a veneer of quality and value to the product by associating it with a particular country or province of manufacture; feta cheese from Greece as an example, or champagne from France, or electrical whitegoods from Germany.<sup>111</sup> Labelling of products has been embraced by ethical and sustainable consumerism movements. Product labels and certifications—often developed by industry associations—designating a product as "organic," "vegan-friendly," "recyclable," and "fair-trade" are nowadays common-place in stores across a range of product lines.<sup>112</sup> Indeed, previous experimental studies have evaluated the effect of organic labelling and ethical trade labelling.<sup>113</sup>

The effect of IHL-related labels could be tested by conducting an experiment whereby different sets of participants are presented with the identical product but with different labels, variations of which could include versions of place-of-origin labelling or labels that certify

<sup>106</sup>The behavioral effects detailed below were selected for illustrative purposes only. While several others are likely candidates for similar experimentation—such as endowment effect or political persuasion—space does not permit an elaboration of other effects nor a discussion of their experimental application to investigate the impact of corporate IHL violations on consumers' decision-making.

<sup>107</sup>Wilkinson et al., *supra* note 105, at 80.

<sup>108</sup>Thaler et al., *supra* note 84.

<sup>109</sup>ENRICO TREVISAN, *THE IRRATIONAL CONSUMER: APPLYING BEHAVIORAL ECONOMICS TO YOUR BUSINESS STRATEGY* 7 (2013).

<sup>110</sup>See, e.g., Farm Security and Rural Investment Act of 2002 H.R. 2646, 107th Cong. (2002); *Country of Origin Food Labelling Information Standard 2016* (Cth) s 123 sch 2 (Aust).

<sup>111</sup>MICHAEL BLAKENEY, *THE PROTECTION OF GEOGRAPHICAL INDICATIONS: LAW AND PRACTICE* (2d ed., 2019).

<sup>112</sup>See, e.g., FRIEDER RUBIK & PAOLO FRANKL, *THE FUTURE OF ECO-LABELLING: MAKING ENVIRONMENTAL PRODUCT INFORMATION SYSTEMS EFFECTIVE* (2017); Eva van der Zee, *Legal Limits on Food Labelling Law: Comparative Analysis of the EU and the USA*, 27 EUR. BUS. L. REV. 295 (2016).

<sup>113</sup>See, e.g., Jens Hainmueller, Michael Hiscox & Sandra Sequeira, *Consumer Demand for Fair Trade: Evidence From a Multistore Field Experiment*, 97 REV. ECON. & STAT. 242 (2015).

IHL-compliant product manufacture. How are differently worded IHL-related labels received by consumers?

## 2. Context Effects and Menu Dependence

Intuitively we appreciate that context matters. Behavioral economics has validated that indeed people's decisions are influenced by the context in which they are made.<sup>114</sup> An important contextual element in a consumer-purchasing context is whether the product in question is placed amongst other feasible alternative products that serve the same function, or whether it is a unique proposition for the consumer.<sup>115</sup> The "menu dependence effect" suggests that people have an aversion to extremeness and prefer moderation.<sup>116</sup> Dan Ariely conducted an experiment among MIT students to measure this effect. He crafted two alternative subscription offers to *The Economist* magazine. One alternative had three menu options – online, print, and Print+Online subscriptions, with each option priced at \$59, \$125, and \$125 respectively. In a separate treatment, just two menu options were offered: online and Print+Online with the same pricing. Ariely observed that while nobody ever chose the middle option, it served as a "decoy" and prompted a greater proportion of students to choose the pricier Print+Online subscription option than when the decoy was not offered.<sup>117</sup> Ariely's methodology can be appropriated to assess the influence of these effects in the context of influence of IHL on consumer decision-making. Rather than offering participants to purchase or not purchase a product whose manufacturer is complicit in IHL violations in isolation, additional experimental treatments can be conducted wherein the product—such as Dead Sea cosmetic facial scrubs from an Israeli-West Bank settlement or cotton T-shirts manufactured in Kashmir—will not be offered to the consumer in isolation, but as one in a menu of options of other like products, comparable in price and quality. As such, distinguishing products connected to IHL violations in relation to feasible alternatives would enable experiments to address the question: Do IHL messages effectively change consumers purchasing preferences?

## 3. Representativeness/Group Attribution

Behavioral economics also suggests that *who* is conveying the information with regard to the product's origins may also influence consumer decisions.<sup>118</sup> This will be important to ascertain as it will provide insights into message-penetration of different groups when it comes to international law, and in particular IHL violations, and into which messengers resonate more with certain social groups and communities. To assess the effect of group attribution effects, further treatments can be conducted that vary not the label nor information conveyed, but primarily the source of that information. Will a video of the UN's Secretary-General condemning a particular company resonate more of less with consumers than a political leader from the conflict-zone? How does the source of the information change the way consumers consume IHL information?

## 4. Social Comparisons

Social settings and one's peer group are also documented influences on individual decision-making.<sup>119</sup> Peers' actions and opinions can become reference points for decision-making.<sup>120</sup> For instance, a person is more likely to speed on a freeway "if everyone else

<sup>114</sup>Wilkinson et al., *supra* note 105, at 81.

<sup>115</sup>DAN ARIELY, PREDICTABLY IRRATIONAL (2008).

<sup>116</sup>*Id.*

<sup>117</sup>*Id.* at 6.

<sup>118</sup>Tversky et al., *supra* note 81.

<sup>119</sup>ERIK ANGNER, A COURSE IN BEHAVIORAL ECONOMICS 5, 61 (2d., 2016).

<sup>120</sup>ROBERT CIADDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION (2006).

is.”<sup>121</sup> Another example of this effect is found in the experiments of Alcott and Kessler who tested the effect on home energy consumption when the energy reports of neighbors were publicly shared.<sup>122</sup>

Goodstein and Campbell found that consumers make different selections of wine when they are asked to buy a bottle of wine to bring to dinner at a potential employer’s place— “high social risk”—or for their own private consumption—“low social risk.” In line with this literature, experimental treatments can be developed to make the purchase of our IHL-tainted products—for instance a bottle of wine sourced from an Israeli West-Bank settlement or a ruby-necklace from Myanmar—a social one. It is hypothesized that a person will be less inclined to purchase a product of a company who has allegations of IHL violations against it when in a social setting rather than a private one. How does the social context affect purchase decisions of IHL-tainted products?

#### D. Conclusion: Towards a More Effective International Law

This article has advocated for the incorporation of the individual consumer into our shared conception, study and practice of international law. The consumer behavioral experiments outlined in this article contribute to the recent turn to the experimental in international law,<sup>123</sup> and offer a novel approach for doing so. Their focus on individual consumer decision-making circumvents a key dilemma of applying individual-oriented behavioral theories to the study of international law and contributes to our understanding of the relevance and effectiveness of international law that eschews the typical state-centricities.

While this article has focused on IHL violations and their effects on consumer purchasing decisions, the experimental approach and methodology discussed herein are replicable, and applicable to other areas of international law. For instance, international human rights law, environmental law and trade law are all likely candidates to form the subject-matter for similar experimentation that seek to assess their effect on individuals’—as opposed to state—behavior. To be sure, ethical consumerism researchers have been testing similar hypotheses in experimental settings for decades. However, they are invariably couched in ethical, not legal, terms.<sup>124</sup> Experiments emphasizing the effect of international *legal* norms, in contrast to *ethical* norms, could supplement data derived from ethical consumer research, and offer comparative insights into the influence of global ethics versus legal norms on the everyday individual.

The data derived from consumer international law experiments will be of significance to academics and other stakeholders in the study and practice of international law and global governance. Moreover, the significance of integrating the consumer in international legal research is not only in that it is explanatory but prescriptive. As Franck, Keohane, and Victor have argued, effective governance regimes must maintain legitimacy in the eyes of stakeholders.<sup>125</sup> Better understanding of the influence of international law and the value placed upon it by lay-people can contribute to the design of better laws and governance regimes, and more successful communication strategies to convey their content.

IHL is often celebrated as one of the most respected sets of international law, and the gravity of its violations is attested to by their characterization as war crimes. Yet little is understood as to how individuals consume information regarding IHL and how their behavior is

<sup>121</sup>STEVEN LEVITT & STEPHEN DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* (2005).

<sup>122</sup>Hunt Alcott & Judd B. Kessler, *The Welfare Effects of Nudges: A Case Study of Energy Use Social Comparisons*, 11 AM. ECON. J.: APPLIED ECON. 236, 236–76 (2019).

<sup>123</sup>Chilton et al., *supra* note 73.

<sup>124</sup>See, e.g., Trevisan, *supra* note 109; THE ETHICAL CONSUMER (Rob Harrison, Terry Newholm, & Deirdre Shaw eds., 2005); Veronika Andorfer & Ulf Liebe, *Do Information, Price, or Morals Influence Ethical Consumption? A Natural Field Experiment and Customer Survey on the Purchase of Fair Trade Coffee*, 52 SOC. SCI. RSCH. 330 (2015).

<sup>125</sup>Thomas Franck, *supra* note 14, at 20; Keohane et al., *supra* note 11.



influenced by violations of it. The proposed experiments will help inform IHL dissemination and education activities of organizations such as the International Committee of the Red Cross and national Red Cross-Red Crescent societies mandated to educate the public on IHL.<sup>126</sup> The experiments may provide qualitative and quantitative evidence on whether a company's reputation and revenue can be affected by association with IHL violations. In turn, this may help shape corporate policies and practices with respect to adherence to IHL norms, due diligence processes in conflict-affected areas, and product labelling. Ultimately, this will contribute to ongoing efforts to improve responsible business conduct in conflict-affected areas.

The individual consumer cannot, in a formalistic legal sense, comply with international law. An individual who purchases a product sourced from a company committing war-crimes is not, ipso facto, committing a crime nor even violating international law. However, formal compliance with international law is not the subject-matter of these experiments nor the motivation of this article, but rather international law's influence and effectiveness. This article—and the proposed experimental focus on individual consumers' interactions with IHL—reflect a reorientation of what international legal scholars measure when assessing whether international law works. No longer should a myopic view of state-centric compliance exclude other actors. Higgins and others have opened the door to consider other addressees of international law, including companies and individuals. So too our conception and methods of assessing international law's effectiveness must similarly expand to encompass these new participants in the international legal order. After all, can the norms of IHL really be said to be as effective as can be if they are ignored by companies and everyday consumers? Ultimately, these too are potential avenues to make international law, in all its guises, more impactful. As the motto goes: “*Der Kunde ist König*”—“The customer is always right.”

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<sup>126</sup>STATUTES OF THE INTERNATIONAL COMMITTEES OF THE RED CROSS, art. 4(g) (2017); STATUTES OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENTS, art. 5(g) (1986).

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