1 Introduction

For several decades, one of the leading perspectives in legal theory—perhaps the leading perspective—has been the economic analysis of law. The theory of human behaviour underpinning standard economic analysis of law—like economic analysis in general—has been the rational choice theory. According to this theory, people always strive to enhance their own well-being by choosing the available option that maximises their expected utility. In the past few decades, rational choice theory has been challenged by a growing body of empirical studies. These studies contested the assumption of thin, cognitive rationality by showing that people’s preferences often do not comply with the formal requirements of dominance, transitivity, invariance, etc. They also called into question the assumption of thick, motivational rationality, by highlighting the role of motivations such as fairness, envy, and altruism in people’s behaviour. In the past twenty years, jurists have incorporated the insights of behavioural analysis into legal scholarship, and applied this methodology to a wide range of legal fields.¹

The expansion of standard economic analysis into public international law is a relatively recent development,² and the application of behavioural insights in this sphere is in its early stages.³ This is somewhat surprising, given that behavioural insights have been used by International Relations scholars for quite some time.⁴ For example, International Relations scholars have used prospect theory—including loss aversion and risk seeking in the domain of losses—to explain the tendency of countries to take greater risks to avoid perceived losses,⁵ and to ‘fight harder and hold out longer in trade disputes with preventive objectives

---


than [...] in cases with promotive ones.’ It has also been argued that several cognitive heuristics and biases—such as over-confidence, the fundamental attribution error, and loss aversion—tend to produce more hawkish decisions in international conflict situations.

Applying behavioural insights to the analysis of international law comes with a unique set of challenges (beyond those associated with applying behavioural insights at the domestic level—such as concerns about the external validity of laboratory, vignette-based experiments, and the overly bleak portrayal of human decision-making as being systematically irrational). One challenge stems from the fact that the players in the international arena come from different societies, so cultural differences in judgment and decision-making may loom particularly large in this sphere. Another significant challenge is that most players in the international arena—including countries, international organisations, and non-governmental organisations—represent entire populations (sometimes numbering in the millions), and it is unclear how the psychology of individuals translates into decision-making by such entities. Moreover, the distinction in this respect is not merely between groups and individuals: the players in the international arena also vary in their institutional design and decision-making processes, and often include heterogeneous sub-groups with conflicting interests and perspectives. However, these challenges do not negate the application of behavioural analysis to international law, but rather require a careful inquiry into the unit of analysis involved in the given instance (e.g., political leaders, domestic bureaucrats, diplomats), and the precise means by which behavioural phenomena might alter their decisions.

Despite the considerable challenges it faces, several fruitful applications of behavioural insights have already been implemented in international law. Generally speaking, the greater the similarity between decision-making in the domestic and international spheres, the easier it is to apply behavioural insights developed in the former to the latter. Primary examples are negotiations and judicial decision-making. Other issues in international law that have benefitted from a behavioural perspective include the tradeoff between ex ante

---

8 The fundamental attribution error denotes the tendency to attribute other people’s behaviour to their personal attitudes and motivations, rather than to environmental influences and constraints. See L. Ross and R.E. Nisbett, The Person and The Situation: Perspectives of Social Psychology (1991); Zamir and Teichman, supra note 1, at 68–69.
11 Broude, supra note 3, at 1121–30.
13 Cross references to van Aaken’s paper in this symposium.
credibility of commitment and ex post flexibility in treaty design;\textsuperscript{15} the pros and cons of linking between treaties on different issues (such as human rights and trade);\textsuperscript{16} the design and implementation of human rights law;\textsuperscript{17} and the pros and cons of international fact-finding reports.\textsuperscript{18}

This Article introduces the concept of \textit{nudge} into the behavioural analysis of international law. Broadly defined, nudges are ‘low-cost, choice-preserving, behaviorally informed approaches to regulatory problems.’\textsuperscript{19} As the research in the area has demonstrated, regulators can often change peoples’ decisions by engaging in \textit{choice architecture}—that is, by designing the decision-making environment such that it is likely to induce people to make decisions that the architect wishes to promote. For example, in many areas (such as consumer contracts, retirement savings, and organ donations), empirical studies have documented a robust \textit{default effect}\textsuperscript{20}—people’s tendency to stick with the option that is designated as the default, even if opting out of that default entails no significant transaction costs. This finding suggests that by setting certain options as the default, choice-architects can promote such options, while maintaining peoples’ liberty to opt out if they so wish.

In this Article, we first introduce the notion of international nudges, and argue that such nudges can be both effective and desirable (Section 2). Section 3 then presents several concrete examples of international nudges, and explains the dynamic process by which they operate. Finally, Section 4 offers some concluding remarks and highlights potential paths for future research.

### 2. The Case for International Nudges

In recent years, many references to behavioural law and economics in the public and legal discourse have revolved around the legitimacy and effectiveness of nudges. Nudges are regulatory tools that use psychological insights to design the decision-making environment in a way that promotes certain choices. Importantly, nudges do not limit the choice set that individuals face, and are therefore dubbed by some as ‘libertarian.’\textsuperscript{21} Following the seminal work of Richard Thaler and Cass Sunstein, regulatory agencies around the world have harnessed behavioural science to achieve their goals. Tools such as smart disclosures, social comparisons, and default settings have been used to promote welfare in areas such as nutrition, saving for retirement, and energy conservation.\textsuperscript{22} These regulatory

\textsuperscript{15} See van Aaken, \textit{supra} note 3, at 459–63.
\textsuperscript{16} \textit{Ibid} at 548–49.
\textsuperscript{20} See Zamir and Teichman, \textit{supra} note 1 at 179–82.
interventions have been tested empirically over time, and their effectiveness (and limitations) has been documented.

Shifting from the domestic context (where governments nudge individuals) to the international arena requires careful consideration of the unit of analysis and the pathway of influence. In the international arena, one can point to at least three nudge-generating sources. One is within each country, as one actor attempts to influence the decision-making of another—for example, when diplomats who negotiate a treaty nudge the politicians in charge of ratifying the treaty towards a certain decision. A second source of nudges is when one country seeks to influence the decisions of other countries—either as part of a treaty (such as when several countries agree to nudge each other through an established mechanism), or unilaterally (as is the case of a single nation attempting to change the policies of another nation through behavioural insights). A third possible source of nudges is international organisations, such as the United Nations.

Understanding how nudges influence state behaviour requires some speculation, although one can think of numerous ways by which they might work. The most obvious one is by directly changing the decision-making environment of individuals vested with political power. Making certain policies more salient, or framing options as gains or losses, etc., can alter the decisions of politicians, who are ultimately human decision-makers themselves. Alternatively, nudges might influence the views of the public at large, which in turn indirectly influences policymakers seeking to cater to those views. This effect may be achieved directly, or through intermediaries such as the media or local NGOs. Finally, nudges might change the balance of power within national governments by tilting policies in a certain direction. For example, an international nudge that raises the saliency of environmental policies might help the local environmental agency to promote its agenda vis-à-vis other agencies within the local government.

Even if the precise mechanism by which nudges operate in the international arena is not always clear, their existing uses, as exemplified in Section 3, support the conjecture that they are indeed effective. As at the national level, however, the issue of the legitimacy and desirability of nudging still looms large.

Generally speaking, critics of nudges (from opposing camps) have argued that nudges might result in insufficient, or excessive, state intervention. The former criticism suggests that while nudges can bring about significant changes in human behaviour, these changes may not always suffice given policymakers’ underlying goals—and therefore more intrusive measures, such as compulsory legal mandates, should be used. Those who argue that nudges may result in excessive state intervention claim that exploiting flaws in human judgment and decision-making—as nudges often do—compromises people’s control over their choices, and is therefore a greater threat to their autonomy than overt coercion.

---


Elsewhere, we have generally sided with the former camp.\textsuperscript{25} Be it as it may, the case for using nudges is considerably stronger in the international arena than at the national level—for at least two reasons. First, unlike the national arena, in the international one there is, as yet, no central legislative body, and the enforcement mechanisms of existing customary international law and treaty law are generally rather weak. Consequently, while at the national level the basic tripartite choice is between compulsory rules, nudges, and doing nothing, in the international arena only the latter two options are usually available. Nudges in the international sphere are therefore less vulnerable to the criticism that they are not intrusive enough. Second, without delving into the thorny philosophical debate on whether corporate entities possess autonomy, normative judgment, and moral agency, concerns over harm to individual autonomy appear to be relatively less relevant when nudges are used to influence the behaviour of countries and organisations, rather than individuals.\textsuperscript{26} This is especially true in settings where nudges are used only after governments consent to their use. Hence, international nudges are less vulnerable to the opposite accusation that they are disrespectful of autonomy.

One should acknowledge, however, that the limited political accountability in the context of international governance might weigh against international nudges. International policymakers are relatively less accountable than domestic politicians.\textsuperscript{27} The World Bank, for example, might implement nudges that influence the lives of individuals around the globe, while many of those individuals are unable to influence the decisions of the World Bank in any meaningful way. Since nudges offer unaccountable players in the international arena a new and powerful tool, they also generate new risks. Of course, this point carries normative weight only to the extent that political accountability is desirable.\textsuperscript{28}

The normative debate notwithstanding, as a positive matter nudges can and do play a role in the international sphere. In the following section, we demonstrate this role in opting-out arrangements in treaties, deadlines and other goal settings, and in international rankings.

3. International Nudges in Action

In this Section we present four concrete examples of international nudges. It should be acknowledged at the outset that in none of these examples do we make a causal claim regarding the effect of the nudge, as the nudges examined were not introduced randomly into the decision-making environment. This reflects a general challenge facing the behavioural analysis of international law. However, this methodological obstacle is not

\textsuperscript{25} Zamir and Teichman, \textit{supra} note 1, at 184–85.

\textsuperscript{26} To be sure, external interventions in states’ sovereignty could implicate autonomy, as hegemonic powers dictate global policies. The controversy surrounding the market based economic policies dictated by the Washington Consensus can serve as a case in point. See Gore, ‘The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries’, 28 \textit{World Development} (2000) 789.


\textsuperscript{28} \textit{Ibid.}, at 4.
insurmountable. Progress can still be made using the best available empirical and theoretical methodologies.\textsuperscript{29}

\textbf{A. The Default Effect: Opt-Out Arrangements in Multilateral Treaties}

One notable example of the use of choice architecture to influence states’ decision-making can be found in the adoption of opt-in and opt-out arrangements in multilateral treaties. Numerous behavioural studies have documented a default effect in various contexts—including enrolment in pension plans, registration for posthumous organ donation, and contractual negotiations.\textsuperscript{30} That is, once an option is set as the default, it often becomes the reference point for people’s decisions, which in turn can trigger the omission and status quo biases.\textsuperscript{31} The result is a ‘sticky’ default, which people tend not to opt out of—even when transactions costs are low.

Jean Galbraith has demonstrated the role of opt-in and opt-out arrangements by examining a dataset of over 300 multilateral treaties, in which ratifying countries could choose whether disputes arising from the treaty were to be adjudicated by the International Court of Justice (ICJ).\textsuperscript{32} These treaties vary in their framing of this choice: some subject disputes to the jurisdiction of the ICJ, while implicitly allowing countries to make reservations to the pertinent provisions; others explicitly allow countries to opt out of the ICJ’s jurisdiction; and still others require countries to explicitly opt into it. In the implied-reservation framing, very few countries chose to opt out of ICJ jurisdiction—resulting in 95% implicitly submitting to its jurisdiction. When the explicit-opt-out framing was adopted, 20% opted out of the ICJ’s jurisdiction—meaning 80% accepted it by default. Finally, in the explicit-opt-in framing, only 5% of the countries opted for the ICJ’s jurisdiction. While these findings may seem puzzling from the perspective of rational choice theory, they fall neatly in line with the predictions made based on the default effect—namely, the tendency to stick to default arrangements, whatever they might be, even when the costs of opting out of them are trivial. The fact that very few countries opted into the ICJ jurisdiction in the opt-in framing, while relatively few opted out of it in the opt-out framing, is consistent with the findings regarding the default effect in decision-making by individuals. The fact that considerably more countries opted out of the jurisdiction when this option was made explicit is in line with the finding that people tend to ignore attributes and options that are not explicitly brought to their attention (and overweight variables and options that are).\textsuperscript{33} As Galbraith rightly points out, however,

\textsuperscript{29} See Broude, \textit{supra} note 3, at 1130–35.


\textsuperscript{31} On these biases see, van Aaken and Broude, \textit{supra} note 12 at XX.


correlation does not imply causation. Specifically, it is quite possible that the drafters of the treaties sought to tailor the default arrangement to the presumed preferences of the ratifying countries. Nonetheless, the magnitude of the effect and qualitative evidence from the records of treaty negotiations lend support to the conjecture that cognitive factors did play a role in this regard.\(^{34}\)

That said, one should be wary of overstating the power of the default effect. In both domestic and international arenas, interested parties might opt out of the default for reasons of rational cost-benefit analysis or cognitive heuristics.\(^{35}\) Thus, for example, attempts to harmonise international trade law might be thwarted by the reluctance of lawyers to apply unfamiliar norms to the contracts they draw up, prompting them to opt out of applicable conventions.\(^{36}\)

Nonetheless, the policy implications of the behavioural findings are straightforward: if the representatives of countries negotiating a given treaty wish to increase the adoption of a certain arrangement, they should strive to make it the default, and make the option of opting out of the default less conspicuous. Since the officials involved in the drafting of treaties often differ in their professional skills, institutional affiliation, and ideological inclinations from those who decide on whether or not to ratify the treaty; and since the countries taking part in the drafting of a treaty need not be the same as those considering its ratification—these findings are of considerable practical significance.

**B. Loss Aversion: Goal Setting**

Another example of an international nudge may be found in the context of goal setting. A large body of research has examined the capacity of non-binding goals—that is, goals that are not backed by incentive mechanisms such as bonuses or penalties—to change human behaviour.\(^{37}\) Setting a goal can function as a powerful motivation for people to focus on the task at hand, and to exert more effort. The cognitive force driving this effect may be a shift of the reference point—since once the goal is established, failing to attain it is viewed as a loss.\(^{38}\) The applications of this insight are vast, and goals have been shown to improve outcomes in areas such as work productivity, dieting, and health treatments.\(^{39}\)

\(^{34}\) Galbraith, *supra* note 32, at 336–44 (finding support in negotiation history for delegates’ recognition that choices of the form of opt-in and opt-out arrangements can have a practical effect, even if they are of no substantive legal importance).


More recently, regulators have implemented non-binding goals as successful nudges that helped shift behaviour in a desirable direction. In the context of energy conservation, for example, allowing customers to set energy-saving goals helped bring about a significant reduction in electricity use. On a completely different front, setting goals has been used to raise female representation on the boards of publicly traded companies. In the United Kingdom, for instance, the percentage of female directors on the boards of FTSE 100 companies doubled in five years after the creation of a voluntary target of 25% (a figure that has since risen to 33%).

Non-binding goals are becoming part of the international regulatory toolkit as well. A striking example of this is the United Nations Millennium Development Goals (MDG). Published in 2000, the MDG included a range of specific targets that the global community should strive to achieve by 2015 in areas such as poverty reduction, education, infant mortality, and gender equality. Following their adoption, a comprehensive reporting system managed by the United Nations monitored the progress made by countries with respect to each goal. By 2015, many of the targets set out in the MDG were achieved—for example, the number of people living in ‘extreme poverty’ has declined by more than half. Nonetheless, it is difficult to infer a causal relationship between the establishment of the MDG and the ensuing improvement in the relevant indexes, since improvement was made on these fronts irrespective of the MDG.

A more recent example of non-binding goals functioning as a cornerstone of international policymaking may be found in the context of climate change. In 2009, the United Nations climate conference charged with creating a successor to the Kyoto Protocol ended in complete failure, due to the strong reluctance of industrialised countries to assume more onerous targets, having struggled to comply with the Kyoto goals. Thus, a need emerged for a nudge-type regime that would spur countries to action, while maintaining their discretion.

The Paris Agreement of 2015 did just that, by shifting from legally binding targets to a flexible system of non-binding self-imposed goals—thereby transforming global policy on climate change. At the global level, it sets the ambitious goal of limiting the temperature increase to 1.5°C above pre-industrial levels. Perhaps more importantly, at the national level, it required parties to submit ‘Nationally Determined Contributions’ (NDC) that

---

44 See Friedman, ‘Causal Inference and the Millennium Development Goals (MDGs): Assessing Whether There Was an Acceleration in MDG Development Indicators Following the MDG Declaration’, MPRA Paper No. 48793, 2013; available at: https://mpra.ub.uni-muenchen.de/48793/ (last visited XXX).
46 On the Paris Agreement, see generally ibid.
47 See Article 2. 1(a), Paris Agreement.
delineate their specific goals to reduce greenhouse emissions. By design, these NDCs are non-binding, since the agreement explicitly states that its compliance mechanism ‘shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.’ The main mechanism put in place to bolster compliance was a public review process, to be held every five years. While it is premature to judge whether the Paris Agreement is a success, it demonstrates the need for international nudges in the face of national sovereignty, and shows how such a nudge can be designed.

Finally, while we cannot present a comprehensive theory of goal-setting in this article, we would like to highlight four key issues that should be incorporated into the design of goal-based nudges. First, goals should be realistic. Empirical findings suggest that when goals are set too high, the result may be that people quickly ignore them. Second, agents should receive ongoing feedback about the progress they are making vis-à-vis their intended goal: this steers people’s decisions over time toward the goal, thereby helping to moderate its impact. Third, goals should be clearly quantifiable: merely setting a goal of making a ‘best effort’ results in significantly lower outcomes than setting a precise objective. Fourth, countries’ performance must be transparent. A key precondition for the effectiveness of goals in the international arena is the existence of accurate data regarding goal achievement.

C. Loss Aversion: Deadlines
One particular type of goal that has gained considerable traction in the behavioural literature is the sort that addresses the timeframe of performance of a given task—i.e., deadlines. Deadlines exist in all spheres of private and public life, and for diverse purposes. Sometimes they pertain to actions that people, organisations, or countries are obliged to take—such as the duty of taxpayers to file tax returns, or the obligation of countries to complete the destruction of their chemical weapons and production facilities. In other
instances, they pertain to non-obligatory actions—such as the time limit for appealing a court judgment, or the deadline for signing a treaty. Deadlines can serve the interests of the entity setting the deadline—such as a seller’s ability to manage its stock through promotional sales. But occasionally they are used to prompt action that is expected to benefit the actor (such as helping people to overcome procrastination in vaccinating against a seasonal disease), or society at large (such as prompting people to register for posthumous organ donation). 57

Particular attention has been given to the role of deadlines in negotiation. Empirical and theoretical studies have found a deadline effect, whereby agreement is often reached at the last minute before the deadline. 58 Deadlines can therefore help the parties become more focused and effective, and increase the likelihood of reaching an agreement. This observation—widely reflected in diplomatic practice 59—is also supported by studies indicating that when there is a limited time to do something, people tend to be less wasteful, and more focused, productive, and creative. 60 While exogenous deadlines in international negotiations tend to be more effective than self-imposed or symbolic ones (because self-imposed deadlines can easily be extended, and the adverse effects of not meeting self-imposed and symbolic deadlines tend to be less severe), all deadlines can have some effect on the negotiating parties. 61

Anecdotal observations and experimental studies, however, indicate that deadlines also have drawbacks. Excessively tight deadlines can result in worse agreements: time pressure produces a greater need for cognitive closure, so in high time-pressure conditions, negotiators are more inclined to resort to stereotypical thinking about the opponent. They are also less likely to revise erroneous fixed-pie perceptions, and consequently reach less creative and integrative agreements. 62 A meta-analysis of dozens of studies has found that ‘imposing time pressure in conflicts may indeed be a double-edged sword.’ 63 Depending on the particular circumstances of the negotiations—including the complexity of the

---

61 Berridge, supra note 59, at 55–60.
disputed issues and the parties’ negotiation strategy—while deadlines can make agreements more likely, they may also result in worse agreements.64

Commentators have observed that these laboratory findings are reflected in peace negotiations over territorial disputes and in multilateral treaty negotiations. Thus, the key conclusion Marco Pinfari draws after comparing dozens of instances of negotiations over territorial disputes and analysing several case-studies in depth, is that agreements made under deadlines are less durable.65 Jean Galbraith attributes the ‘remarkably creative’ arrangements of the Chemical Weapon Convention to the fact that during its extended formative years—from the late 1960s onwards—negotiations were conducted without deadlines, and its successful completion owed to an informal deadline of one year, set in 1991.66

Deadlines, even if more symbolic than pragmatic, may affect the signing and ratification of treaties, as well. Thus, for example, it was found that of the eleven countries that opted not to sign the Chemical Weapons Convention shortly after it was opened for signature, four—including the United States—signed it in the final month before it came into effect.67

D. Social Comparison: Rankings
The last nudge we would like to address is the emerging practice of country rankings—a practice that has been dubbed a ‘new technology of global governance’.68 A robust literature in behavioural economics and social psychology has demonstrated that social comparison is a strong motivating force in human behaviour.69 According to this literature, people judge their position not only in absolute terms, but also in relation to the positions of other people. The desire not to be at the bottom of the distribution, to be above average, or to ascend to the top, can be a powerful driver of human behaviour, independent of the payoffs associated with a given task. The power of such social comparisons has been demonstrated in numerous settings, including academic performance and work productivity, through a range of methodologies.70

Building on this body of knowledge, behavioural economists have examined how social comparisons might be used as a regulatory tool.71 One area where this approach has had a significant impact is the promotion of energy efficiency at the household level. Numerous field experiments have shown that informing households, through their electric bill, how

---

64 For a review of the literature, see Pinfari, supra note 59, at 23–30.
65 Ibid., at 136–54.
67 Ibid., at [6].
69 For an overview, see J. Suls and L. Wheeler (eds), Handbook of Social Comparison: Theory and Research (2010).
71 See Thaler and Sunstein, supra note 22 at 53–73.
their energy efficiency compares with their neighbours can bring about a significant decrease in energy consumption. As a result, many utility companies around the world have adopted such comparative information in the bills they send their clients.

As always, extrapolating from the individual or the household to the state level is challenging. Nonetheless, there is reason to suspect that comparative data might serve as a motivational tool at the international level as well. Credible publications of a country’s international ranking can spur that country’s elite decision-makers to action, since a country’s performance in international rankings can affect their self-esteem. Given its simplicity and salience, a country’s ranking can also serve as a focal point of media coverage, NGO activity, and public discourse, thereby creating demand for reform from the bottom up.

Two illustrations can demonstrate the use of country rankings in the international sphere. The first reflects unilateral acts of powerful countries in a bid to prompt other countries to take action in transnational issues. The ongoing effort by the United States to combat international human trafficking is a case in point. The main tool used by the United States on this front is the State Department’s annual Trafficking in Persons Report (TIP). The TIP Report divides countries into three tiers, based on the efforts they make to combat human trafficking. While inclusion in the bottom tier of the TIP Report can result in sanctions (suggesting a rational-choice basis for this program), it most likely also triggers a behavioural effect given its comparative nature. For example, the 2001 TIP Report listed Israel in the bottom category, noting that ‘[t]he Government of Israel does not meet the minimum standards for combating trafficking in persons.’ This finding quickly prompted a public outcry that led to political action: a leading news website emblazoned the news item with the headline ‘Human Trafficking Report Ranks Israel with Third World Nations,’ and in her opening statement to the Knesset (Parliament) committee discussing the report, MK Colette Avital noted:

[...] we are in a ‘good’ spot between Belarus, Albania, Gabon and a few other countries such as Bosnia-Herzegovina, Burma and Indonesia. We are there in a very ‘respectable’ spot… In this regard, I want to say that our company

---


75 For a methodological overview of the TIP Report, see United States, Department of State, Trafficking in Persons Report 25-29 (2017).

76 Ibid.


78 United States, Department of State, Trafficking in Persons Report 88 (2001).

in this area is not a great compliment to us. We are like a Third World country.\textsuperscript{80}

The impact of the report was immediate: the following year Israel made the necessary amendments, and was elevated to the second tier;\textsuperscript{81} by 2012 the country was elevated to the top tier.\textsuperscript{82} In general, observational data suggests that inclusion in the TIP Report impels countries to toughen their policies on human trafficking (i.e., to criminalise it) in order to raise their ranking.\textsuperscript{83}

While such unilateral use of comparisons in the international arena can prove effective, it also has some drawbacks. Notably, since the ranking is conducted by a single country, idiosyncratic political interests might play a role in the design of the underlying policies.\textsuperscript{84} Accordingly, it is worth examining rankings established by international organisations, rather than individual states. A key example is the World Bank’s \textit{Doing Business Report} (DBR),\textsuperscript{85} which presents an index based on quantitative indicators that measure the friendliness of the regulatory environment with respect to small and medium-sized businesses. To this end, it examines issues such as the ease of starting a new business; the ability to enforce contracts; the simplicity of import and export; and the flexibility of the labor market.\textsuperscript{86}

Currently, the DBR has proven to be a major driver of policy changes.\textsuperscript{87} Countries around the world devote significant resources to boosting their standing in its rankings, with some even establishing special governmental departments for that purpose.\textsuperscript{88} Even the harshest critics of the DBR concede its effectiveness at promoting deregulation and pro-business policies.\textsuperscript{89} The precise causal mechanism underlying the impact of the DBR probably cannot be empirically established—after all, even in the absence of a ranking system, countries have strong incentives to adopt pro-business policies.\textsuperscript{90} To the extent that the DBR is effective, however, it is due at least in part to its comparative nature. In a press release marking the 15th anniversary of the DBR, its creator Simeon Djankov noted that, although this was an unintended consequence, the competitive environment created by the

\textsuperscript{80} The Knesset, Minutes of Investigatory Committee on Human Trafficking (July 18\textsuperscript{th}, 2001).
\textsuperscript{81} United States, Department of State, Trafficking in Persons Report 63 (2002).
\textsuperscript{82} United States, Department of State, Trafficking in Persons Report 194 (2012).
\textsuperscript{83} See Kelley and Simmons, \textit{supra} note 74, at 62–68.
\textsuperscript{86} To be sure, the DBR also involves an element of direct incentives, since it plays a role in decisions regarding financial aid (see Davis, Kingsbury and Merry, \textit{supra} note 68, at 92). However, that component is arguably not a motivating factor for many of the countries included in the DBR.
\textsuperscript{90} The literature examining the connection between the DBR and foreign direct investment has documented a positive association between the two, yet this association is nuanced and differs from one country to the next. See Corcoran and Gillanders, ‘Foreign Direct Investment and the Ease of Doing Business’, 151 \textit{Review of World Economy} (2015) 103.
DBR is responsible for its biggest impact. As he noted, ‘once you start ranking countries and comparing them, natural competition like a “World Cup” or the “Olympics” comes about.’

Of course, there are considerable challenges to designing nudges based on social comparisons at the international level. For one, the methodological difficulties of quantifying complex attributes and ranking them on a numeric scale are significant. The DBR, for example, has been heavily criticised for omitting numerous nuanced dimensions of many legal systems. Perhaps more importantly, even if one can design a perfect scale, normative questions still loom large. For example, the specific measures incorporated into an international index might not reflect the ideal policies for all countries, given their individual characteristics. More fundamentally, the normative goal of the index itself could be challenged. Finally, the very act of ranking could potentially create perverse incentives, as countries attempt to ‘game the system’ and alter their behaviour so as to artificially enhance their ranking without addressing the core issues at hand. While this is clearly a valid concern (readers affiliated with law schools in the United States might recall the various measures taken by their schools to artificially boost their respective U.S. News & World Report rankings), it should not be overstated. A recent evaluation of the DBR concluded that no evidence was found of reforms being introduced by countries for the sole purpose of raising their ranking.

Our positive view of rankings in general, and of the DBR in particular, is limited to their effectiveness at promoting reforms, and should not be read as an overall endorsement of the specific agenda set by any particular ranking system. That said, our analysis highlights a strategy that critics of the DBR might adopt—namely, the publication of alternative rankings that focus on other policy goals. For example, the United Nations routinely publishes the Human Development Index, which focuses on issues such as health,

---

92 Ibid.
93 See Høyland, Moene and Willumsen, supra note 89; Cooley supra note 68, at 27–30.
96 For a critique of the BDR and its laissez-faire economic agenda with respect to labor relations, see Lee, McCann and Torm, ‘The World Bank’s “Employing Workers” Index: Findings and Critiques—A Review of Recent Evidence’, 147 International Labour Review (2008) 416. This critique eventually brought about significant reforms in the BDR. See Davis, Kingsbury and Merry, supra note 68 at 93-95.
knowledge, and the standard of living, with the explicit aim of drawing attention away from economic growth. 100

Finally, the behavioural literature highlights a number of issues to bear in mind when designing nudges based on comparative performance. Occasionally, social comparisons can be counter-productive and lead to reduced performance, due to their demoralizing effect. 101 Special attention should also be given to the comparison benchmark—e.g., global versus regional. 102 To this end, comparison with a salient rival may be more effective, as it has greater impact on a country’s status. 103 Lastly, the design of the comparative benchmark might be influenced by the specific issue in question—for example, whether the issue is one in which countries seek to be at the forefront (such as international investments), or wish to avoid rating among the worst (such as in human trafficking). 104

4. Conclusion
This Article made the case for using nudges as a policy tool in the international arena, and examined several concrete examples of such nudges in action. Arguably, nudges may not be the first-best solution to many of the pressing challenges facing the global community. A binding and fully enforceable command-and-control regime may be the ideal way to deal with climate change, and a global tax-and-transfer system may be the best means of combating extreme poverty. In this regard, nudges should be viewed as a second-best option given the limitations of policy-setting and enforcement at the international level.

Future research could further develop the concept of international nudges along both theoretical and empirical lines. From a theoretical perspective, future studies could examine other regulatory domains where nudges might be used, and highlight other behavioural tools (e.g., anchoring, framing) that could be put to use. Future theoretical studies could also delve into the normative questions raised by international nudges, and examine whether institutional reforms aimed at elevating accountability of international bodies are necessary given the new regulatory power these bodies now possess. From an empirical perspective, since in all likelihood randomized experimental studies of international nudges are not on the foreseeable horizon, emphasis should be put on observational studies—both quantitative and qualitative—that may help further our understanding of state decision making, and guide the use of nudges in the international arena.

102 It is claimed that rankings are sometimes conducted in a manner that deliberately targets regional rivalries. See Cooley, supra note 68, at 21.
103 See Doshi, Kelley and Simmons, supra note 87 (presenting experimental data showing that Indians were more motivated to act on the DBR when presented with comparative data pertaining to China).