



WHAT IS INTERNATIONAL CONSUMER LAW ALL ABOUT?

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Abstract

An increasing amount of work has gone into making consumer law international. The growing importance of international consumer law is evidenced by some of the major recent crises involving global consumer law (Dieselgate, Facebook, etc.). This paper makes the case that, rather than focusing on harmonizing substantive consumer law, efforts towards the internationalization of consumer law should instead be directed toward the establishment of internationally recognized minimum standards of consumer protection (as accomplished by the United Nations Guidelines on Consumer Protection) and the development and facilitation of cooperation as a necessary precondition for the effective protection of consumers (as started by the International Consumer Protection and Enforcement Network). This is due to two factors: first, policy approaches are more easily used to achieve coordination among diverse countries in the area of consumer protection than substantive harmonization; second, coordination is currently an instrument that can offer a higher level of consumer protection than substantive harmonization.

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Introduction

Law is still one of the least globalized aspects of society in a world where markets are highly internationalized and globalization is accelerating. Nonetheless, even the legal system is becoming increasingly transnational and international. This also applies to consumer law, where there is a discernible trend toward the creation of supranational regulations or, at the very least, globally acknowledged consumer law concepts (Durovic and Micklitz 2017). Christian Twigg-Flesner and Hans Micklitz noted in an editorial note to a Journal of Consumer Policy issue in 2010 that there isn't "a consistent attempt to consider the international implications of consumer law and policy" (Twigg-Flesner and Micklitz 2010, p. 201). This seems to be the case even ten years later. The field of international consumer law has not

received enough attention, nor has its potential been fully explored.

The growing importance of international consumer law has been highlighted by some of the recent major global consumer law scandals that simultaneously impacted consumers in numerous jurisdictions (such as Dieselgateⁱ and Appleⁱⁱ), underscoring the necessity for a global response to these consumer law issues. This is particularly true when it comes to the application of consumer law regulations. Furthermore, further research in the field has been mandated by the recent significant revisions and advancements of the United Nations Guidelines for Consumer Protection (hence, the "UN Guidelines") and the ensuing worldwide consumer protection-related actions (United Nations 2016). As a result, by critically analyzing the phenomena of the



internationalization of consumer law and outlining potential future routes for its advancement, this study seeks to advance scholarly work in this field. This paper's main contention is that, rather than focusing solely on harmonizing substantive consumer law, efforts towards the internationalization of consumer law should instead concentrate on two key areas: first, the establishment of universally recognized minimum standards of consumer protection; and second, the development and facilitation of cooperation as a necessary pre-requisite for the effective protection of consumers.

In keeping with its main goal, this paper's analysis will concentrate on two key areas: the International Consumer Protection and Enforcement Network (ICPEN), which is the most well-known global framework for consumer protection cooperation, and the United Nations Guidelines, which serve as the primary source of international consumer law.

THE TWO MAIN PURPOSES OF CONSUMER LAW INTERNATIONALLY

The field of consumer law is still very new (Ramsay 2007). The year 1962 is traditionally regarded as the inception of contemporary consumer law and policy. It was in this year that US President John F. Kennedy delivered his well-known speech that laid the groundwork for the later creation of a regulatory framework solely devoted to the protection of consumers—not just in the USA but across the globeⁱⁱⁱ. Consumer law is a new field of law that emerged as a result of the creation of a new regulatory framework for the protection of consumers. In the fifty-eight years that have passed, consumer law has grown into its own field of law and has expanded to all corners of the globe in varying degrees and ways.

The European Union has created the most sophisticated regulatory framework for consumer protection in the world and has given particular fertile ground for the growth of consumer law (Stuyck 2000).

International consumer law attempts have been undertaken in tandem with the development of national consumer protection laws. Two major

objectives of the internationalization of consumer law were to be accomplished: (1) the creation of a basic standard of consumer protection that would be applicable to all countries, and (2) the removal of barriers to the expansion of international trade. Given that these two objectives represent the dual character of the internationalization of consumer law, it may be crucial to distinguish between them. The contradictory nature of international consumer law further highlights the conflict between the necessity to eliminate cross-border disparities in order to promote international trade and the need to create universal minimum standards of consumer protection. Thus, the establishment of a universally recognized "floor" standard for consumer protection is the primary goal of the internationalization of consumer law. Regulators and legislators are incorporating international benchmarking in consumer law into their work more and more. Global consumer policy may be significantly impacted by benchmarking (Ramsay 2006, p. 16). The right to be protected while acting as a consumer has evolved into one of the fundamental human rights, and in that sense, international consumer law can be understood as the outgrowth of human civilization. This is particularly significant given the nature of the modern world and its consumption-based economic model. Within that framework, the main goal of international consumer law is to provide a minimal standard of worldwide consumer protection that would transcend national boundaries (Ramsay 2006). The development of consumer law may be considered as a component of the process of democratization of countries, nations, and societies. In the modern world, the issue of consumer protection has evolved into one of democracy and fundamental democratic ideals in any community. Additionally, every citizen is a consumer by default. As President Kennedy remarked memorably at the outset of the creation of consumer law: "Consumers, by definition, include us all."^{iv}

This category of international consumer law regulations focuses on safeguarding consumers, i.e., creating regulations that will shield consumers from potential abuse by traders because of an imbalance in bargaining power – regardless of the location of the trader or the consumer. It has been left to national legal systems to create and implement complete and effective national consumer protection systems in accordance with their needs and particularities. The goal of this approach is to define basic standards only. Regarding the first goal, the United Nations, and specifically the United Nations Conference for Trade and Development (UNCTAD), have been the primary impetus for the creation of these regulations. The UN Guidelines for Consumer Protection continue to be the primary means of furthering the internationalization of consumer law on a worldwide basis. On the other hand, UNCTAD has very little authority to enforce consumer legislation. Given that the goal of the ICPEN network is to provide a minimum standard of consumer law enforcement worldwide, its establishment and subsequent advancements can be seen as highly significant achievements.

Some traders have become international participants as a result of the market's internationalization. For instance, Amazon is currently among the largest international corporations. It began as an online bookshop but soon grew to include a wide range of consumer goods, including electronics, clothing, and household items. Products purchased on Amazon's website are sent in 300 nations^v. On every continent^{vi}, Consumer law must provide a sufficient "international" regulatory response in order to support this kind of globalization of consumer interactions. In this regard, upholding a minimal standard of consumer protection that no jurisdiction should fall short of must be the primary goal of international consumer law. The advancement of technology and its potential benefits for society should never be exploited as a justification of Consumer Protection. The removal of obstacles to international trade serves as the second driving force for the

creation of a unified worldwide consumer law. In reality, the World Trade Organization views different consumer law regulations in a jurisdiction as a "non-tariff obstacle to the development of cross-border trade" (Grainger 2011, pp. 53–54). Differences in consumer protection regimes could be perceived as a trade inhibitor. Here, the main objective of international consumer law is to improve the efficiency of cross-border consumer transactions by establishing uniform standards in consumer protection regulatory frameworks. It is clear that the internationalization of these regulations has less of an emphasis on protecting consumers and more on making compliance requirements easier for merchants who wish to conduct business locally or internationally.

This strategy is driven by the belief that businesses and consumers are underpaying in an intensely competitive, globally integrated market where the widest range of products and services is restricted by various consumer law-related barriers. Increased cross-border consumption is prioritized by consumerism policy, which further supports the need to harmonize regulatory regimes to improve market access. Businesses need legal certainty, on the one hand. Traders, particularly small and medium-sized businesses, are uncertain about whether their cross-border operations adhere to the relevant consumer law regulations. In light of this, regulatory coherence is crucial for promoting international trade. However, in order to promote their participation in the globalized consumer market, customers want to know that they are safe when they purchase across borders, which presents a significant problem in terms of consumer trust. In order to maintain legal certainty for businesses and consumers—two important forces behind a dynamic, inventive, and competitive market—cross-border trade must be predictable. Regarding the second objective of globalizing consumer law, it is anticipated that the World Trade Organization (WTO) will assume a prominent position. Surprisingly, though, the WTO hasn't done much to promote

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global consumer protection up to this point (Durovic and Micklitz 2017, pp. 5–23). Rather, a number of regional efforts have worked toward a regional consolidation of consumer law obligations. According to the United Nations (2018), on page 12 (Point 52), this is the situation with the European Union, the Association of Southeast Asian Nations (ASEAN), the Central African Economic and Monetary Community, CARICORUM, and the Common Market for Eastern and Southern Africa.

The process of internationalizing consumer law has two distinct goals, which were discussed earlier: introducing an acceptable, international minimum standard for consumer protection and standardizing consumer law requirements to facilitate cross-border trade. It is important to note that these two goals may overlap in practice. The instance of the European Union is the most evident example. Achieving high standards of consumer protection on a pan-European scale and bolstering the Internal Market by eliminating barriers to cross-border trade in goods, services, and digital content have been the primary goals of the majority of European directives that make up the body of EU consumer law (Recitals (4), (5) and Article 1, Directive 2011/83/EU on consumer rights ("Consumer Rights Directive"); Article 1, Directive 2005/29/EC on unfair commercial practices ("Unfair Commercial Practices Directive").

THE SIGNIFICANCE OF THE UNITED NATIONS CONSUMER PROTECTION GUIDELINES

A Universal Baseline for Consumer Protection

2020 will be a significant year for global consumer law. Thirty-five years have passed since the UN Guidelines for Consumer Protection^{vii} were first adopted, this year. Thirty-five years later, the UN Guidelines continue to be the most significant worldwide tool for consumer protection, helping to foster confidence between buyers and sellers in the marketplace. As a result, the two main concerns are what impact the UN Guidelines have had on the evolution of consumer law and the extent to which, throughout the course of their 35-

year existence, the UN Guidelines have actually helped to internationalize consumer law.

It's interesting to note that, despite being the most significant international text in the field of consumer protection, legal experts have paid surprisingly little attention to or evaluated the UN Guidelines in general. In actuality, not much has been written regarding these Guidelines. It is possible to counter that the UN Guidelines have no practical significance and are therefore unworthy of evaluation due to this lack of interest. However, the lack of interest in consumer protection is likely due to the fact that, in comparison, a proper empirical investigation about the actual impact of the UN Guidelines in practice was never conducted, making it difficult to determine their true impact. All that is known, though, is that they have influenced the creation of consumer laws in developing nations (Harland 1997). It is yet unclear how exactly they will affect the national consumer legislation.

Comparably, as other transnational consumer law regimes—like EU Consumer Law—are far more developed and have thus been widely cited as models globally, more attention has actually been paid to adhering to them (Stuyck and Durovic 2016). It should be mentioned that some of the advancements in consumer law have also involved non-UN international institutions including the World Bank, G20, and Organization for Economic Co-operation and Development (OECD).^{viii} These organizations appear to be somewhat exclusive international organizations for economically developed countries, raising doubts about their suitability as global representatives. Furthermore, their consumer protection efforts are not comprehensive nor horizontal; rather, they are concentrated on particular areas of consumer legislation, like Consumer Credit Law. The UN Guidelines are not legally binding in the literal sense of

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the word because, as their name implies, they are just recommendations. The UN Guidelines are merely a model that nations may choose to adhere to; they are not required by law to do so. Since the Guidelines are soft legislation, they offer a useful means of fostering agreement among all UN member states for their ratification. Once more, the consequences of non-binding agreements are very debatable. For this reason, the ramifications of the UN Guidelines in real life are quite problematic. Since the UN Guidelines are non-binding, individual nations are free to create consumer protection regulations that are tailored to their own legal frameworks, economic, social, and political environments, and other requirements. Without a question, this is a good thing. Nonetheless, it is still difficult to create a successful national consumer legislation based on the Guidelines—which are quite ambiguous and expansive. Most notably, in the crucial and challenging area of consumer law enforcement, the UN Guidelines offer little assistance.

The United Nations was able to come to an agreement on the adoption of a legally binding document in another area of private law, international commercial contract law, a few years prior to the first version of the UN Guidelines. The Vienna Convention on International Sales of Goods, which was adopted in 1980, was this. Contracts involving consumers are not covered by the CISG (Art. 2(a), CISG). The Convention on Contracts for the International Sale of Goods (CISG) has grown to be one of the most accessible systems of commercial contract law in the world (Bonell 2008). It has, however, left a number of legal holes and, given that it is a binding legal document, a convention, it has also proven impossible to agree to ever change any of its components or expand upon it (Di Matteo 2013). For this reason, even if the Convention still needs minor alterations and clarifications, it has been

mostly unchanged since its inception. Unlike the CISG, the UN Guidelines' soft law status allowed for future growth and guaranteed that all areas of consumer protection may be freely covered. In a way, the UN Guidelines represent a codex of universally acknowledged consumer rights. In this way, the Guidelines' soft law nature may even be seen as a benefit, guaranteeing its comprehensiveness, dynamic nature, and ease of adaptation to changes compared to the scenario in if it were a legally binding document.

Eventually, several nations developed their national consumer protection systems based on the Guidelines, which specified core consumer rights, serving as an inspiration and model for many other nations (United Nations 2013). In many nations, achieving a high standard of consumer protection has even been enshrined in national constitutions (Benöhr and Micklitz 2010, pp. 36–38). Adopting an international convention or any other type of legally binding instrument for consumer rights is now fairly impossible, as the experience with the UN Guidelines shows. Because they pursue different goals, the CISG does not serve as a good model for international consumer law in this regard. The goals of international consumer law and international contract law diverge. International commercial contract law seeks to establish a common set of neutral norms that will regulate business-to-business transactions. The goal is to impartially regulate transactions. For example, equal protection for both the seller and the buyer has been a fundamental feature of the CISG (Arts. 1-4, CISG). Although there are provisions for remedies, there is no mention of enforcement, which is accomplished mainly through arbitration and national courts in the absence of a supranational court with the authority to rule on CISG disputes.

Furthermore, from a policy standpoint, safeguarding the rights of the buyer and



seller is not considered a serious issue. In contrast, as the Court of Justice of the European Union^x has noted, the focus of international consumer law (as well as national consumer law regimes, of course) must always be on protecting consumers as a weaker party in their commercial relationship with traders "as regards both his bargaining power and his level of knowledge."Therefore, it is understandable that international consumer law could not aim to level the playing field for all parties in the same manner that international commercial contract law does in an effort to address the imbalance between traders and consumers. It becomes evident that international consumer law cannot simply appropriate the accomplishments of the CISG for its own purposes; rather, the goals of the two fields are diametrically opposed. The United Nations, the most well-known and representative international body made up of all nations with international recognition, developed the UN Guidelines, which gives them their strength. The UN Declaration of Human Rights, which is merely a declaration but is nevertheless acknowledged as a minimal set of rights guaranteed to every single person on the planet (United Nations 1948), might be compared. It's important to note that the UN Guidelines do not mandate that national consumer laws be harmonized. Conversely, the UN Guidelines recognize that consumer law regimes around the world differ from one another. The fact that it is extremely challenging to discuss the "consumer" as a homogenous concept from an international perspective may be one of the driving forces behind such an approach. The needs of consumers in the various nations of the world vary significantly from one another. The UN's member states represent a range of social and economic development phases as well as consumer awareness levels.

The focus of consumer law in economically developed states is on protecting

consumers' economic interests; in emerging economies, on the other hand, local consumer law should prioritize securing consumers' access to basic needs such as electricity and water. Access to essential services can serve as a benchmark, highlighting the differences in consumer law objectives across the globe. The aforementioned highlights the fundamental objective of consumer legislation, which is to raise consumers' standards of life regardless of where they reside. In this regard, it can be seen that the UN Guidelines' primary objective is not to remove barriers to international trade. Instead, they were designed to set minimal standards for consumer protection^x that should be applicable to all consumers worldwide and that no member state of the UN should ever fall below. The UN Guidelines just lay the firm groundwork or foundation upon which each country's unique consumer laws should be built.

The Guidelines acknowledge the worldwide nature of consumer protection in their definition of the consumer, emphasizing that the consumer's nationality has no bearing on the protection's reach. Additionally, the Guidelines provide special consideration to safeguarding weaker and less fortunate consumers. One issue with globalization is that it makes consumers even more vulnerable because it is very difficult to safeguard them when they deal across borders (Goldring 1996).

THE ISSUES FACING INTERNATIONAL CONSUMER LAW TODAY

The current issues facing consumer policy must be taken into account while developing international consumer law, especially with regard to the UN Guidelines and ICPEN's work. Two significant issues facing consumer law and policy today must be sufficiently addressed on a worldwide basis. The first is the surge in cross-border transactions, while the second is the Internet's emergence as the world's largest marketplace and the whole range of



technology advancements that have upended established consumer law. These two problems aren't always entirely distinct from one another. Conversely, it appears that they are largely interconnected and hence need to be handled in tandem. This is due to the fact that cross-border trade has increased significantly as a result of the Internet's emergence as a global marketplace, which eliminates the need for the counterparties to the transactions to physically move. The global reach of the Internet has led to a significant rise in the volume of consumer transactions in which the parties involved are located in different legal jurisdictions, let alone on separate continents. However, the Internet may be utilized as a worldwide platform for resolving consumer issues because it was initiated by ICPEN.

According to Li et al. (2017), the Fourth Industrial Revolution is marked by the market changing quickly and the new technologies becoming more and more relevant. While the emergence of new technology has given consumers and businesses more options, it has also presented unique difficulties for consumer law and policy. The growing importance of internet platforms and multinational corporations like Uber, which have had a big impact on traditional consumer legislation, is a great example (Hatzopoulos 2018). A certain amount of complexity is inherent to new technologies due to the number of players involved, the interdependence of devices, the autonomous actions of products, the gathering, analyzing, and utilization of large amounts of data, and the potential for updates and extensions of already-circulating products. (EU 2018)

The challenge facing international consumer law today is adapting to these developments and creating the ideal regulatory framework. The one crucial disclaimer is that consumer law isn't meant to impede the advancement of new

technology or their practical implementation. Conversely, consumer legislation must make sure that technology advancements do not lead to a decrease in the degree of consumer protection; that is, a particular level of consumer protection must be maintained regardless of technological advancement. The fundamental theme is consumer trust: consumer legislation should be appropriate and sufficiently adaptable to allow for future innovation, while also preserving a high enough degree of consumer trust in the market (by upholding the minimal threshold) to encourage cross-border online trading.

It is also true that customers have benefited greatly from digital technologies, including the introduction of new goods and services. These technologies have also created some new difficulties for consumer law at the same time. For instance, the technology permits monitoring or reprisal against customers who criticize merchants in online reviews, as well as manipulation of the digital forums that offer reviews of goods and services. Additionally, because smart contracts are self-enforcing, their usage in business-to-consumer transactions has raised a number of significant legal issues. Because of their self-enforcing character, it is unclear how best to safeguard customers in such a changing environment (Borgogno 2018). International consumer law and policy should be concentrated on ensuring an appropriate degree of consumer protection on a worldwide scale in the age of such rapid technology advancements. Digital content and services have emerged as a third category of consumer goods, in addition to goods and services. One unanswered concern is how the spread of new technologies might help with consumer law enforcement; the use of smart contracts provides important insights into this area. In that regard, the creation of specialized software to verify that consumer contracts' terms and conditions

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adhere to consumer protection legislation is an example of how new technology is being applied (Micklitz et al. 2017).

CONCLUSION

Overall, it can be said that the ICPEN and UN Guidelines are excellent concepts that offer strong bases for international consumer law. To build a more comprehensive and effective system of international consumer law, additional work must be done. Currently, it appears to be impossible to construct a worldwide consumer law that is consistent, united, and harmoniously administered, together with a centralized dispute settlement mechanism. Ensuring adequate enforcement of consumer law should be the primary goal of international consumer law, rather than developing unified substantive norms for consumer protection. That is the most crucial and troublesome aspect of consumer law. UNCTAD, being the main agency of the United Nations for consumer protection, could potentially enhance the enforcement of consumer laws worldwide. Thus, the role that UNTAD plays in enabling the coordination of activities at the national, regional, and global levels ought to be strengthened even more (United Nations 2018, p. 12).

In order to both profit from and provide an appropriate regulatory response to the emergence of new technologies and the Internet as a global marketplace, international consumer law must pay close attention to these changes. These advancements might make it easier to set up the communication and collaboration framework needed for consumer law, especially when it comes to cross-border consumer law enforcement. The largest obstacle facing international consumer law appears to be securing a sufficient and effective legal framework in order to enable future cooperation of this kind. In order to address this issue, there should be international agreement among the

nations, and this is the area that requires additional effort.

While ICPEN is undoubtedly a fantastic place to start, it is unquestionably necessary for it to be developed further. A global database on how a consumer law issue is to be handled under various consumer law jurisdictions, for instance, might be created using the current ICPEN network and easily consulted by consumers with any consumer law-related issues. It is true that linguistic disparities could cause issues, which would take attention away from translation. This is another area, though, where new technology might enable an automatic translation between languages to give customers a brief summary of the main points of the relevant case law and substantive national consumer protection legislation.

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- ⁱⁱSee Nemeth, K. and Carvalho, J. (2017). “Dieselgate” and consumer law: Repercussions of the Volkswagen scandal in the European Union. *Journal of European Consumer and Market Law* 6(1), 253.
- ⁱⁱⁱKennedy, J. F. (1962). *Special Message on Protecting the Consumer Interest*. Retrieved from <https://www.presidency.ucsb.edu> (accessed 25 September 2021).
- ^{iv}Ibid
- ^vMany countries around the globe subdivided into multiple jurisdictions, hence the large number.
- ^{vi}Retrieved from <https://www.amazon.com/gp/help/customer/display.html?nodeId=201910800> (accessed 25 June 2022).

^{vii}United Nations General Assembly, Resolution 39/248 of 16 April 1985 (A/RES/70/186). Retrieved from <https://www.un.org/documents/ga/res/39/a39r248.htm> (accessed 25 June 2022).

^{viii}The OECD, for instance, has set up a Committee on Consumer Policy (CCP) with the aim of both tackling a variety of consumer policy issues and of fostering international cooperation among public authorities. Retrieved from <https://www.oecd.org/sti/consumer/> (accessed 25 June 2021). Similarly, the G20 has arranged a Task Force on Financial Consumer Protection in cooperation with the OECD. Retrieved from <http://www.oecd.org/finance/financial-education/g20-oecd-task-force-financial-consumer-protection.htm> (accessed 25 June 2019).

^{ix}Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial SA v Rocio Murciano Quintero e.a.* [2000] ECR I-04941, para 25; Case C-168/05 *Elisa María Mostaza Claro v Centro Móvil Milenium SL* [2006] ECR I-10421, para 25; Case C-40/08 *Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira* [2009] ECR I-9579, para 29

^xGuideline 3 of the UN Guidelines: “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.’