

FASHIONING COMPLIANCE: THE FASHION CHARTER FOR
CLIMATE ACTION AND STRATEGIES FOR FORMING A MORE
EFFECTIVE FASHION INDUSTRY AGREEMENT

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TABLE OF CONTENTS

I. INTRODUCTION	409
II. BACKGROUND AND HISTORY	410
A. <i>The Evolution of the Fashion Industry and the Emergence of Fast Fashion</i>	410
i. <i>The Old-Fashioned Way</i>	411
ii. <i>Industry Changes Leading to Emergence of Fast Fashion</i>	411
iii. <i>Size and Impact of Fast Fashion</i>	413
B. <i>The Environmental Impact of Fast Fashion</i>	414
i. <i>The Producing, Processing, and Manufacturing of Textiles</i>	414
ii. <i>The Washing and Caring for Garments</i>	415
iii. <i>The Proliferation of Garment Disposal</i>	416
C. <i>Previous Solutions to Fashion’s Environmental Impact</i> ...	417
i. <i>Self-Regulation by Private Industry</i>	417
ii. <i>Standard Setting by Certification Boards</i>	417
iii. <i>Soft Law’s Latest Solution: The Fashion Charter for Climate Action</i>	418
III. EXPLICATION OF THE LAW AT ISSUE	419
A. <i>The Fashion Charter for Climate Action</i>	419
i. <i>The Fashion Charter’s Actors</i>	419
ii. <i>The Fashion Charter’s Goals</i>	419
iii. <i>The Fashion Charter’s Modalities of Work</i>	420

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<i>B. The United Nations Framework Convention on Climate Change</i>	421
<i>i. U.N. Climate Change</i>	421
<i>ii. U.N. Climate Change Actors</i>	421
<i>iii. U.N. Climate Change Goals</i>	422
<i>iv. U.N. Climate Change Modalities of Work</i>	422
<i>C. General Principles of International Environmental Law</i> ..	423
<i>i. Framework Agreements</i>	423
<i>ii. States as Actors</i>	424
<i>iii. Corporations at International Law</i>	425
IV. ANALYSIS OF POSSIBLE SOLUTIONS.....	427
<i>A. Industry Leaders as the Best-Suited Actors to Solve the Problem</i>	428
<i>i. Why States Cannot Solve The Garment Industry's Issue</i> 428	
<i>ii. Garment Industry Leaders as the Better Suited Actors to Address the Problem</i>	430
<i>B. How Industry Leaders Can Incentivize Participation in an Agreement</i>	431
<i>i. Market Incentives Will Push Retailers</i>	431
<i>ii. Economic Incentives Will Push Suppliers</i>	433
<i>C. Formulating a Better Treaty with a Comprehensive Supply-Chain Approach</i>	434
<i>i. Producing, Processing, and Manufacturing Textiles</i> ..	434
<i>ii. Washing and Caring for Garments</i>	436
<i>iii. Garment Disposal</i>	436
<i>D. Creating Enforcement Mechanisms to Hold Industry Participants Accountable</i>	437
<i>i. Requiring Full Transparency</i>	437
<i>ii. Fining for Non-Compliance</i>	438
<i>E. Pricing and Accessibility</i>	438
<i>i. Changing Consumer Expectations for Pricing</i>	438
<i>ii. Promoting Accessibility to Sustainable Fashion</i>	439
V. CONCLUSION.....	439

I. INTRODUCTION

The fashion industry produces \$2.5 trillion dollars per year, and employs hundreds of millions of people worldwide.¹ The rising global demand for fast and cheap clothing coupled with the proliferation of outsourcing supply chains has created significant global impacts on labor, human rights, and the environment.² The environmental impacts of the fashion industry in particular are astounding. Each step of the fashion industry supply chain creates a slew of concerns, including the production and processing of raw materials, the manufacturing of the raw materials into garments in factories, and the packaging and distribution of the garments. Yet, the environmental impact does not end with the supply chain. Cheaply made garments release chemicals and microplastics when washed, which eventually make their way into the ocean and other water sources.³ While clothes are manufactured at an alarming rate, people discard their clothing more readily, leading to an accumulation of clothing in landfills where natural fibers take hundreds of years to decompose and synthetic fibers may never biodegrade.⁴ These issues are further agitated by consumers, whose demand for cheap and quick clothing largely outweighs any concerns regarding the fashion industry's externalities on the world.⁵ Some experts claim that the fashion industry is the among the most polluting industries in the world.⁶

Many advocates and experts have responded to the fashion industry's environmental crises with various soft law approaches. Certification boards purport to inform consumers on ideal industry standards and to guide actors in different parts of the supply chain to achieve best practices.⁷ These certification boards establish frameworks for ethical production of raw materials or processes and award "certification" to companies that comply.⁸ Fashion companies put on public relations campaigns and adopt "green" vernaculars to illustrate their

¹ ELIZABETH L. CLINE, *THE CONSCIOUS CLOSET: THE REVOLUTIONARY GUIDE TO LOOKING GOOD WHILE DOING GOOD* 1 (2012) [hereinafter Cline, *CONSCIOUS CLOSET*].

² Solene Rauturier, *What Is Fast Fashion?*, GOOD ON YOU (May 10, 2020), <https://goodonyou.eco/what-is-fast-fashion/>.

³ Cline, *CONSCIOUS CLOSET*, *supra* note 1, at 163–64.

⁴ *Id.* at 33.

⁵ *Fast Fashion*, THE FASHION LAW, <https://www.thefashionlaw.com/learn/fast-fashion/> (last visited Apr. 12, 2021).

⁶ *UN Launches Drive to Highlight Environmental Cost of Staying Fashionable*, UN NEWS (Mar. 25, 2019), <https://news.un.org/en/story/2019/03/1035161>.

⁷ See Whitney Bauck, *Fashionista's Complete Beginner's Guide to Ethical Fashion Certifications*, FASHIONISTA (Apr. 30, 2019), <https://fashionista.com/2019/04/ethical-fashion-certification-list>.

⁸ *Id.*

dedication to sustainability.⁹ In 2018, the United Nations Framework Convention on Climate Change (U.N. Climate Change) hosted the adoption of the Milestone Fashion Industry Charter for Climate Change with thirty-two fashion industry signatories and twelve supporting organizations.¹⁰ This Charter establishes milestones modeled after the Paris Agreement's substantive goals, including, for example, achieving net-zero emissions from the fashion industry by 2050.¹¹

The U.N.'s recent attempts signify the largest, most cooperative efforts to address the fashion industry's environmental impact to date; however, these efforts still fall short of incentivizing widespread industry participation and effectively addressing the environmental impact of each facet of the supply chain. This Note attempts to analyze the Milestone Fashion Industry Charter for Climate Change and U.N. Climate Change's supporting organizational framework, the shortcomings of the agreement in producing an incentive for industry-wide participation, and possible approaches to crafting a better agreement.

II. BACKGROUND AND HISTORY

A. The Evolution of the Fashion Industry and the Emergence of Fast Fashion

Fast fashion is the practice of rapidly translating high fashion design trends into low-priced garments and accessories by mass-market retailers at low costs. There are a number of elements that are key to the fast fashion process, namely: the price of the garments and accessories; the method and timeline of manufacturing; the trend-based nature and disposability of the clothes themselves.¹²

⁹ *Id.*

¹⁰ *Milestone Fashion Industry Charter for Climate Action Launched*, U.N. CLIMATE CHANGE (Dec. 10, 2018), <https://unfccc.int/news/milestone-fashion-industry-charter-for-climate-action-launched>.

¹¹ *Id.*

¹² THE FASHION LAW, *supra* note 5.

i. The Old-Fashioned Way

Historically, clothes have been expensive, difficult to attain, and highly valued.¹³ In the 1800s, most people had to produce materials—including wool, leather, and cotton—themselves, convert the material into a woven textile, and then create a garment.¹⁴ From the 1900s to the 1950s, most clothing was still produced domestically in local dressmaking businesses or small workshops.¹⁵ Clothing represented a significant purchase for most people.¹⁶ For example, after World War I, the average American spent \$238 on clothing per year, about 17% of their annual income.¹⁷ Further, “in 1929 the average middle-class man owned six work outfits and the average middle-class woman nine.”¹⁸ Until the mid-twentieth century, “clothes were pricey and precious enough that they were mended and cared for and reimagined countless times, and most people had a few outfits that they wore until they wore them out.”¹⁹

ii. Industry Changes Leading to Emergence of Fast Fashion

The Industrial Revolution’s introduction of new inventions, such as the sewing machine, made clothing production “easier, quicker, and cheaper.”²⁰ Moreover, fabric restrictions and functional designs prompted by World War II led to an increase in standardized clothing production.²¹ Following the World Wars, U.S. citizens enjoyed more wealth and spent more on clothing.²² Additionally, U.S. citizens began following fashion trends and “accumulat[ing] far more clothing than they could regularly wear.”²³ In the 1960s, people started to view fashion as

¹³ ELIZABETH L. CLINE, *OVERDRESSED: THE SHOCKINGLY HIGH COST OF CHEAP FASHION* 4 (2012) [hereinafter CLINE, *OVERDRESSED*].

¹⁴ Sara Idacavage, *Fashion History Lesson: The Origins of Fast Fashion*, FASHIONISTA (Oct. 17, 2018), <https://fashionista.com/2016/06/what-is-fast-fashion>; Rauturier, *supra* note 2.

¹⁵ Idacavage, *supra* note 14.

¹⁶ CLINE, *OVERDRESSED*, *supra* note 13, at 20.

¹⁷ *Id.*

¹⁸ *Id.* at 20–21.

¹⁹ *Id.* at 4.

²⁰ Rauturier, *supra* note 2.

²¹ Idacavage, *supra* note 14.

²² CLINE, *OVERDRESSED*, *supra* note 13, at 21.

²³ *Id.*

a means of self-expression.²⁴ Today, people in the United States purchase 400% more clothing than they did thirty years ago.²⁵

As production of clothing increased, the price of clothing “plummeted.”²⁶ U.S. populations began moving out of cities and into suburbs, and the popularity of department stores waned while the prominence of shopping malls—and the low-priced chain stores they offered—increased.²⁷ The reduction in clothing prices transformed the purchase of clothing from a budget-busting, important acquisition to one associated with discretionary income.²⁸ Low-priced clothing created a culture of chasing trends, and the sustained competition for low prices led to fashion companies cutting corners in terms of the quality, design, and construction of their products.²⁹ Industry changes “made it possible to produce clothing at increasingly lower prices, prices so low that many consumers consider this clothing to be disposable.”³⁰

The increased production and declining prices of clothing coincided with an industry shift from domestic production to overseas production.³¹ Fashion companies reduced costs by taking advantage of lower-priced markets in developing countries; for instance, in 2004, nearly 75% of all clothing exports came from developing countries.³² The United States, once home to a burgeoning garment trade, now “makes [two] percent of the clothing its consumers purchase, down from about [fifty] percent in 1990.”³³ Unfortunately, environmental regulations relating to chemicals and pollutants are relaxed in outsourced low-cost manufacturing centers.³⁴

As companies moved their operations overseas, supply chains became more complicated, leading to longer lead times from a garment’s design to creation.³⁵ Traditionally, fashion retailers released new clothing designs for each season, requiring companies to spend around half of a year moving the designs through the supply chain.³⁶ The time it took for a garment design to manifest through the supply chain created a great burden and risk on fashion companies, leading to a

²⁴ Rauturier, *supra* note 2.

²⁵ THE FASHION LAW, *supra* note 5.

²⁶ Cline, OVERDRESSED, *supra* note 13, at 2.

²⁷ *Id.* at 26.

²⁸ *Id.* at 22.

²⁹ *Id.* at 7.

³⁰ Luz Claudio, *Waste Couture: Environmental Impact of the Clothing Industry*, 115 ENVTL. HEALTH PERSP. A448, A449 (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1964887/pdf/ehp0114-a00449.pdf>.

³¹ THE FASHION LAW, *supra* note 5.

³² *Id.*

³³ Cline, OVERDRESSED, *supra* note 13, at 5.

³⁴ THE FASHION LAW, *supra* note 5.

³⁵ Cline, OVERDRESSED, *supra* note 13, at 97.

³⁶ *Id.*

push for quicker responses to trends and faster production turnaround.³⁷ To counteract the slow turnaround burden, fast fashion companies extended the number of seasons beyond the traditional four and instead released new designs “every four to six weeks, sometimes even more frequently.”³⁸ To counter the risk of investing in new designs that could flop, companies started taking the “looks and design elements from the top fashion houses and reproduc[ing] them quickly and cheaply.”³⁹

The increase in production, decrease in price, outsourcing of labor, and increased turnaround time and frequency of new clothing designs created a new type of clothing firm “which compete[s] with one another on the basis of their ability to adjust rapidly to the fashion trends imposed by others, thereby ensuring speed to market and supplying products already known to be a market success.”⁴⁰ The industry comprised of these firms is referred to as “fast fashion.”⁴¹ “Fast fashion is the practice of rapidly translating high fashion design trends into low-priced garments and accessories by mass-market retailers at low costs,” characterized by the low price, the method and timeline of manufacturing, the trend-based nature, and the disposability of the clothes themselves.⁴²

iii. Size and Impact of Fast Fashion

Considering the size and breadth of the industry, fast fashion has had an extreme impact on the environment. The apparel and footwear industry is a 2.5 trillion-dollar business, accounting for 3% of the global economy.⁴³ The fashion industry employs hundreds of millions people worldwide, most of which are young women.⁴⁴ Clothing production doubled between 2000 and 2014, and “the number of garments the average person purchased each year also increased by [sixty] percent.”⁴⁵ In 1950, the world used around ten million tons of fiber in manufacturing clothes; today, however, the world uses more than eighty-two

³⁷ See Simone Guercini, *Relation Between Branding and Growth of the Firm in New Quick Fashion Formulas*, 5 J. FASHION MKTG. & MGMT. 69, 70 (2001); Vertica Bhardwaj & Ann Fairhurst, *Fast Fashion: Response to Changes in the Fashion Industry*, 20 INT’L REV. RETAIL, DISTRIB. & CONSUMER RES. 165 (2010).

³⁸ THE FASHION LAW, *supra* note 5. Accord Bhardwaj & Fairhurst, *supra* note 37, at 166.

³⁹ Rauturier, *supra* note 2. Accord Bhardwaj & Fairhurst, *supra* note 37, at 165.

⁴⁰ Guercini, *supra* note 37, at 69.

⁴¹ CLINE, OVERDRESSED, *supra* note 13, at 96.

⁴² THE FASHION LAW, *supra* note 5.

⁴³ Cline, THE CONSCIOUS CLOSET, *supra* note 1, at 1.

⁴⁴ *Id.*

⁴⁵ Kendra Pierre-Louis, *How to Buy Clothes That Are Built to Last*, N.Y. TIMES (Sept. 25, 2019), <https://www.nytimes.com/interactive/2019/climate/sustainable-clothing.html>.

million.⁴⁶ The United States buys roughly twenty billion garments per year, and the individual American buys an average of sixty-four clothing items per year.⁴⁷ Moreover, garments produced today typically last no more than ten wearings.⁴⁸

The apparel industry is responsible for 8% of global greenhouse emissions.⁴⁹ The impact of fast fashion on climate change increased 35% between 2005 and 2016 and, if industry practices remain the same, is expected to steadily rise between 2020 and 2030.⁵⁰ The intensified impact of fast fashion on climate change stems from more consumption per capita and an industry shift from the use of natural fibers to more synthetic fibers.⁵¹ The fashion industry is a leading carbon emitter, water polluter, and toxic chemical user.⁵² One-third of the microplastic pollution in the ocean comes from the fashion industry, and “[a] garbage truck’s worth of unwanted fashion is landfilled in the United States every two minutes.”⁵³ Some experts claim that the fashion industry is the second most polluting industry, following only the oil industry.⁵⁴

B. The Environmental Impact of Fast Fashion

i. The Producing, Processing, and Manufacturing of Textiles

Although “technology and regulation to make textile manufacturing less environmentally harmful have improved dramatically in the United States, [] the textile industry has largely moved overseas . . . to countries that are ill-equipped or simply too poor to reduce the impact of the fiber-making process.”⁵⁵ The majority of the fashion industry’s impact on the environment happens through the manufacturing of textiles where materials are grown or produced, processed and prepared for construction, and then finished into a garment.⁵⁶ Pollution caused by the production and processing of textiles cannot be attributed to one single type of fiber:

⁴⁶ Cline, *OVERDRESSED*, *supra* note 13, at 125.

⁴⁷ *Id.* at 3, 5.

⁴⁸ Pierre-Louis, *supra* note 45.

⁴⁹ *Id.*; *Measuring Fashion: Environmental Impact of the Global Apparel and Footwear Industries Study*, QUANTIS (2018), <https://quantis-intl.com/report/measuring-fashion-report/>.

⁵⁰ QUANTIS, *supra* note 49.

⁵¹ *Id.*

⁵² CLINE, *CONSCIOUS CLOSET*, *supra* note 1.

⁵³ *Id.*

⁵⁴ *THE FASHION LAW*, *supra* note 5.

⁵⁵ CLINE, *OVERDRESSED*, *supra* note 13, at 123.

⁵⁶ CLINE, *CONSCIOUS CLOSET*, *supra* note 1, at 161.

Each fabric has its own complex and hefty ecological footprint . . . wool can cause soil erosion, water pollution, and biodiversity loss; leather tanning involves toxic heavy metals; all man-made fiber production emits greenhouse gasses and pollutes water; and the U.S. cotton crop demands [twenty-two] billion pounds of weed killer per year. Most fiber is bleached or dyed and treated in toxic chemical baths to make it brighter, softer, more fade-resistant and waterproof, less prone to wrinkles, and any other number of qualities that we demand of modern clothing.⁵⁷

Polyester is the most commonly used fiber, making up more than half of all fiber output and more than 80% of all synthetic fibers.⁵⁸ Polyester is plastic and made from crude oil.⁵⁹ Cotton is a finicky crop that is difficult to grow, resulting in many farmers using an estimated 220,000 tons of pesticides and 8.8 million tons of fertilizer each year.⁶⁰ These pesticides are harmful to human health and the environment, as they “escape into the air, water, and soil, negatively affecting the many millions of people who live in cotton-growing regions.”⁶¹ Viscose rayon comes from the wood pulp of trees and its production is extremely inefficient—70% of each tree used is wasted in the process.⁶² More than 150 million trees are logged every year to make viscose rayon, and around 45% of the logging takes place in “ancient and endangered forests.”⁶³ Goat and sheep farming for wool and cashmere cause land degradation, desertification, soil erosion, water pollution, and the release of methane.⁶⁴ An estimated 8,000 different synthetic chemicals are used across the globe to transform raw materials into textiles.⁶⁵

ii. The Washing and Caring for Garments

A large part of a garment’s environmental impact is derived from the consumer’s caring for the garment.⁶⁶ Washing and drying a polyester shirt uses around six times the energy used to create it.⁶⁷ Additionally, synthetic fibers like polyester

⁵⁷ Cline, *OVERDRESSED*, *supra* note 13, at 125.

⁵⁸ Cline, *CONSCIOUS CLOSET*, *supra* note 1, at 162.

⁵⁹ *Id.*

⁶⁰ *Id.* at 168.

⁶¹ *Id.*

⁶² *Id.* at 170–71.

⁶³ *Id.* at 172.

⁶⁴ *Id.* at 177.

⁶⁵ Anita Zoltkowski, *What on Earth Is a Clothing Supply Chain?*, GOOD ON YOU (Jan. 18, 2017), <https://goodonyou.eco/what-is-a-clothing-supply-chain/>.

⁶⁶ *Id.*

⁶⁷ *Id.*

shed microplastics when washed.⁶⁸ The International Union for Conservation of Nature claims there are “1.5 million tons of small pieces of what are known as microplastics entering the ocean each year, and as much as 34.8 percent of that pollution is coming from synthetic textiles.”⁶⁹ The effects of microplastics on human health and marine life are not yet known, but microplastics are “found everywhere from beaches to lakes, and in everything from beer and table salt to seafood and drinking water.”⁷⁰

iii. The Proliferation of Garment Disposal

While clothing companies have increased the production of lesser-quality, lower-priced garments, “more clothes are disposed of by consumers, creating a huge amount of textile waste.”⁷¹ When consumers dispose of garments, around 13% goes to material recovery where textiles are repurposed as rags, another 13% is incinerated, and the remainder goes to landfill.⁷² In 2015, the United States “generated 11.9 million tons—or about 75 pounds per person—of textile waste, most of which ended up in landfills . . . more than a 750[%] increase since 1960.”⁷³ When natural fibers end up in landfills, they slowly decompose and “re-lease[] methane, a greenhouse gas twenty-five times more potent than CO₂.”⁷⁴ Synthetic fibers, like polyester, do not “readily biodegrade and might take hundreds of years or more to decompose.”⁷⁵ As synthetic fibers slowly break down, they release the hazardous chemicals used during their production into the air, soil, and groundwater.⁷⁶

Even if consumers attempt to donate their used clothing to local charities, a large portion of those garments are exported and end up in landfills. Around 45% of donated clothing—that which is not considered high-end or vintage—is baled and sold to developing countries.⁷⁷ The United States exports nearly 7 billion pounds of garments per year to over 100 countries.⁷⁸ The quality of clothing sold overseas varies, while some textile exporters hide unwearable clothing inside

⁶⁸ Cline, CONSCIOUS CLOSET, *supra* note 1, at 163–64.

⁶⁹ *Id.* at 164.

⁷⁰ *Id.*

⁷¹ Rauturier, *supra* note 2.

⁷² Zoltkowski, *supra* note 65.

⁷³ Pierre-Louis, *supra* note 45.

⁷⁴ CLINE, CONSCIOUS CLOSET, *supra* note 1, at 33.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Claudio, *supra* note 30.

⁷⁸ *Id.*

bales, “essentially using African countries as their own dumping ground.”⁷⁹ The “poor-quality and soiled clothing that gets donated in affluent nations and then shipped abroad and dumped onto poorer countries” is often immediately land-filled.⁸⁰

C. Previous Solutions to Fashion’s Environmental Impact

i. Self-Regulation by Private Industry

In response to the growing demand for sustainable and ethical fashion, clothing companies have adopted marketing campaigns and eco-buzzwords.⁸¹ Terms, such as “‘ethical,’ ‘fair trade,’ ‘organic,’ ‘natural,’ ‘sweat-shop free,’ ‘recycled,’ and even ‘second-hand’ or ‘vintage’ are used in persuading customers to believe that the fashion products they purchase are environmentally friendly and ethically sound.”⁸² However, using these terms as labels does not guarantee ethical practices, and many fashion companies create their own terminology to avoid association with over-used eco-terms.⁸³ The over-use of these eco-terms and the creation of new ones by some brands exacerbates consumer confusion and burdens those seeking better purchases.⁸⁴ Nevertheless, even if companies adopt an ethical and sustainable vocabulary in marketing campaigns, the clothing they make often still lacks either a sustainable origin or a sufficient quality for long-term use.⁸⁵

ii. Standard Setting by Certification Boards

There is “no single organization or governmental body to regulate any specific ‘code of conduct’ for the fashion industry,” but there are some trade associations and organizations to encourage and monitor ethical practices.⁸⁶ This approach to

⁷⁹ CLINE, *OVERDRESSED*, *supra* note 13, at 135.

⁸⁰ CLINE, *CONSCIOUS CLOSET*, *supra* note 1, at 26.

⁸¹ Nathaniel Dafydd Beard, *The Branding of Ethical Fashion and the Consumer: A Luxury Niche or Mass-market Reality*, 12 *FASHION THEORY* 447, 450 (Apr. 21, 2015), <https://www.tandfonline.com/doi/abs/10.2752/175174108X346931>.

⁸² *Id.*

⁸³ *Id.* at 459.

⁸⁴ *Id.* at 450, 459.

⁸⁵ Pierre-Louis, *supra* note 45.

⁸⁶ Beard, *supra* note 81.

accomplish better environmental outcomes in the fashion industry involves certification boards creating “best practices” standards and awarding certifications to actors who comply. A vast number of certification boards exist, ranging in breadth and depth, but many of the boards focus on only one part of the supply chain or one specific fiber.⁸⁷ As a result, many consumers see a certification on a brand and assume the brand’s entire practice must be sustainable.⁸⁸ Consumers generally lack understanding of what the certifications actually mean, so “companies can hide behind a sustainability index while lacking the transparency that would fully illustrate their performance.”⁸⁹

iii. Soft Law’s Latest Solution: The Fashion Charter for Climate Action

A recent and notable effort to tackle the massive environmental issues in the fashion industry comes in the form of an international agreement between private fashion companies and supporting non-governmental organizations (NGOs): The Fashion Charter for Climate Action (Fashion Charter). In December 2018, U.N. Climate Change hosted the twenty-fourth Conference of the Parties (COP24) in Katowice, Poland.⁹⁰ At COP24, a number of fashion stakeholders, including brands, retailers, suppliers, and others, collaborated to identify holistic methods for moving the fashion industry toward more sustainable practices.⁹¹ The Fashion Charter purports to recognize and confront the environmental impact of the fashion industry at every part of the supply chain.⁹²

⁸⁷ Bauck, *supra* note 7 (providing an overview of a number of certification boards that touch on different parts of the fashion supply chain). *See also* CLINE, CONSCIOUS CLOSET, *supra* note 1, at 161–83 (describing examples of fashion certification boards for each of a selection of fibers).

⁸⁸ Kaleigh Moore, *Sustainable Fashion Brands Look to Certification as a Competitive Differentiator*, FORBES (Sept. 11, 2019), <https://www.forbes.com/sites/kaleighmoore/2019/09/11/sustainable-fashion-brands-look-to-certification-as-a-competitive-differentiator/#543f6dea46a7>.

⁸⁹ *Id.*

⁹⁰ *What is COP24?*, COP24, <https://cop24.gov.pl/presidency/what-is-cop24/> (last visited Oct. 13, 2019).

⁹¹ U.N. CLIMATE CHANGE, *supra* note 10.

⁹² *Id.*

III. EXPLICATION OF THE LAW AT ISSUE

*A. The Fashion Charter for Climate Action**i. The Fashion Charter's Actors*

The Fashion Charter includes forty-three signatories comprised of fashion companies, fashion organizations, and NGOs.⁹³ The Fashion Charter is open for any “company or organization professionally engaged in the fashion sector, and which is committing to the principles of the [Fashion Charter].”⁹⁴ No state is listed as a signatory to the Fashion Charter.⁹⁵

ii. The Fashion Charter's Goals

The Fashion Charter adopts the substantive goals of the Paris Agreement and supports several of the United Nations Sustainable Development Goals: (7) Affordable and Clean Energy; (9) Industry, Innovation, and Infrastructure; (12) Responsible Consumption & Production; (13) Climate Action; and (17)

⁹³ See *Milestone Fashion Industry Charter*, U.N. SUSTAINABLE DEV. GOALS (Dec. 11, 2018), <https://www.un.org/sustainabledevelopment/blog/2018/12/milestone-fashion-industry-charter-for-climate-action-launched/> (listing the founding signatory members as: adidas, Aquitex, Arcteryx, Burberry Limited, Espirit, Guess, Gap Inc., H&M Group, Hakro Gmbg, Hugo Boss, Inditex, Kering Group, Lenzing AG, Levi Straus & Co., Mammut Sports Group AG, Mantis World, Maesrk, Otto Group, Pidigi S.P.A., PUMA SE, re:newcell, Schoeller Textiles AG, Peak Performance, PVH Corp., Salomon, Skunkfunk, SLN Textile, Stella McCartney, Sympatex Technologies, Tarte, and Tropic Knits Group) (listing the supporting organizations as: Business for Social Responsibility (BSR), China National Textile and Apparel Council (CTIC), Global Fashion Agenda (FGA), Global Organic Textile Standard (GOTS), International Finance Corporation (IFC), Outdoor Industry Association (OIA), Sustainable Apparel Coalition (SAC), Sustainable Fashion Academy (SFA), Textile Exchange, WWF International, and Zero Discharge of Hazardous Chemicals Foundation (ZDHC)).

⁹⁴ Fashion Industry Charter for Climate Action, at 5, Dec. 10, 2018, <https://unfccc.int/sites/default/files/resource/Industry%20Charter%20%20Fashion%20and%20Climate%20Action%20-%20202102018.pdf>.

⁹⁵ U.N. SUSTAINABLE DEV. GOALS, *supra* note 93.

Partnerships for the Goals.⁹⁶ To align with the Paris Agreement, the signatories must commit to reducing greenhouse gas emissions 30% by 2030 and achieving carbon-neutrality by 2050.⁹⁷ The Fashion Charter also focuses on developing decarbonization of manufacturing, prioritizing sustainable materials, committing to energy efficiency, partnering with finance communities, and creating a dialogue with consumers to increase awareness.⁹⁸

iii. The Fashion Charter's Modalities of Work

The Fashion Charter's work is facilitated and administratively supported by the United Nations Climate Change Secretariat.⁹⁹ The signatories of the Fashion Charter commit to supporting the implementation of the Fashion Charter's goals through their participation in seven established Working Groups.¹⁰⁰ Each Working Group focuses on "one or more of the principles in the [Fashion Charter]."¹⁰¹ The activities of Working Groups are decided through consensus and funded by their respective participating organizations.¹⁰² The reports produced by the Working Groups are then passed to U.N. Climate Change, which presents the information to other entities.¹⁰³ If a signatory fails to meet its commitments with Working Groups or the goals of the Fashion Charter, the organization may be excluded.¹⁰⁴ Additionally, a signatory may withdraw from the Fashion Charter at any time by written notification to U.N. Climate Change.¹⁰⁵

⁹⁶ *Fashion Industry Launches Charter for Climate Action at COP 24*, SUSTAINABLE DEV. GOALS KNOWLEDGE HUB (Dec. 20, 2018), <https://sdg.iisd.org/news/fashion-industry-launches-charter-for-climate-action-at-cop-24/>.

⁹⁷ U.N. CLIMATE CHANGE, *supra* note 10. Fashion Industry Charter for Climate Action, *supra* note 94, at 3.

⁹⁸ U.N. CLIMATE CHANGE, *supra* note 10. Fashion Industry Charter for Climate Action, *supra* note 94, at 2–4.

⁹⁹ Fashion Industry Charter for Climate Action, *supra* note 94, at 5.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 5–6.

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.* at 7.

B. The United Nations Framework Convention on Climate Change

i. U.N. Climate Change

U.N. Climate Change is a framework convention that facilitates and supports the work of the Fashion Charter by supporting delivery of Working Groups, maintaining a list of the Signatories, facilitating phone calls and meetings, organizing an annual meeting, coordinating external communication, and presenting the work of the Signatories.¹⁰⁶ The adoption of the United Nations Framework Convention on Climate Change in 1992 established U.N. Climate Change.¹⁰⁷ Today, U.N. Climate Change supports a “complex architecture of bodies that serve to advance the implementation of the Convention, the Kyoto Protocol, and the Paris Agreement” by providing expertise, assistance in analysis and review of climate information, and administrative support.¹⁰⁸

ii. U.N. Climate Change Actors

U.N. Climate Change has near universal membership, as 197 countries have ratified the Convention.¹⁰⁹ The signatories of U.N. Climate Change are called “Parties to the Convention.”¹¹⁰ No non-state actors are parties to U.N. Climate Change.¹¹¹

¹⁰⁶ *Id.* at 6.

¹⁰⁷ *About the Secretariat*, U.N. CLIMATE CHANGE, <https://unfccc.int/about-us/about-the-secretariat> (last visited Oct. 14, 2019) [hereinafter U. N. CLIMATE CHANGE, SECRETARIAT].

¹⁰⁸ *Id.*

¹⁰⁹ *What is the United Nations Framework Convention on Climate Change?*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last visited Oct. 14, 2019) [hereinafter U.N. CLIMATE CHANGE, FRAMEWORK CONVENTION].

¹¹⁰ *Id.*

¹¹¹ *List of Parties*, U.N. CLIMATE CHANGE, <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> (last visited Apr. 12, 2021).

iii. U.N. Climate Change Goals

U.N. Climate Change is the United Nations' entity tasked with "supporting the global response to the threat of climate change."¹¹² The ultimate aim of U.N. Climate Change is to prevent "'dangerous' human interference with the climate system."¹¹³ U.N. Climate Change approaches this goal by (1) recognition of the problem, (2) setting "a lofty but specific goal," (3) putting "the onus on developed countries to lead the way," (4) directing "new funds to climate change activities in developing countries," (5) keeping "tabs on the problem and what's being done about it," (6) charting "the beginnings of a path to strike a delicate balance," and (7) kicking "off formal consideration of adaptation to climate change."¹¹⁴

iv. U.N. Climate Change Modalities of Work

U.N. Climate Change accomplishes its goals by coordinating and hosting the annual negotiation Conference of the Parties (COP) and providing administrative support by the Secretariat.¹¹⁵ The COP is the "supreme decision-making body of the Convention," and all Parties are represented at the COP.¹¹⁶

¹¹² U.N. CLIMATE CHANGE, SECRETARIAT, *supra* note 107.

¹¹³ U.N. CLIMATE CHANGE, FRAMEWORK CONVENTION, *supra* note 109.

¹¹⁴ *Id.*

¹¹⁵ *What is COP24?*, COP24, <https://cop24.gov.pl/presidency/what-is-cop24/> (last visited Apr. 12, 2021). U.N. CLIMATE CHANGE, SECRETARIAT, *supra* note 107.

¹¹⁶ *What are Governing, Process Management, Subsidiary, Constituted and Concluded Bodies?*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/bodies/the-big-picture/what-are-governing-process-management-subsidiary-constituted-and-concluded-bodies> (last visited Apr. 12, 2021).

C. *General Principles of International Environmental Law*

i. *Framework Agreements*

Framework agreements, like U.N. Climate Change, arise when parties agree to an international treaty, which “establishes broad commitments for its parties and a general system of governance, while leaving more detailed rules and the setting of specific targets either to subsequent agreements between the parties, usually referred to as protocols, or to national legislation.”¹¹⁷ Framework agreements are flexible and leave room for parties to negotiate and agree to substantive issues in subsequent regulation.¹¹⁸ These framework conventions are usually “broad and relatively shallow agreements that are intended to serve largely as platforms for later and more focused negotiations, typically through the subsequent adoption of protocols.”¹¹⁹

Framework conventions are particularly useful for issues relying on scientific knowledge so that agreements may easily adapt to the latest scientific findings.¹²⁰ For this reason, framework agreements are often used in international environmental law.¹²¹

The agreements establish their own institutional procedures, governance, or quasi-regulatory structures.¹²² The COP is the primary decision-making body of framework conventions, tasked with meeting periodically to “review compliance with and implementation of the treaty[,] . . . create subsidiary bodies, consider new information, and adopt resolutions that fill the interstices of the agreements through amendments and ‘decisions.’”¹²³

Framework agreements impose binding legal obligations on the parties and are subject to the rules of the *Vienna Convention on the Law of Treaties*

¹¹⁷ Nele Matz-Luck, *Framework Agreements*, in MAX PLANCK ENCYCLOPEDIAS OF INT’L L., <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e703> (last updated Feb. 2011).

¹¹⁸ *Id.*

¹¹⁹ K. Russel Lamotte, *Mechanisms for Global Agreements*, in INT’L ENV’T L.: THE PRAC.’S GUIDE TO THE LAWS OF THE PLANET 965–75, 971 (Roger R. Martella, Jr. & J. Brett Grosko eds., 2014), <https://www.bdlaw.com/content/uploads/2018/06/mechanisms-for-global-agreements-r-lamotte-aba-international-law-guide.pdf> (last visited Apr. 12, 2021).

¹²⁰ Matz-Luck, *supra* note 117.

¹²¹ *Id.*

¹²² Lamotte, *supra* note 119.

¹²³ *Id.*

(1969).¹²⁴ However, the effectiveness of framework agreements in achieving their purposes largely depends on the parties' willingness and cooperation in forming subsequent protocols with binding and self-executing substantive obligations.¹²⁵

ii. States as Actors

Traditionally, international law recognizes only states as having legal capacity.¹²⁶ As subjects of international law, states are considered to have legal personality. Legal personality exists when an entity has rights and duties under international law and "the capacity to directly assert those rights and duties in international law fora."¹²⁷ Legal personality not only describes the actors who have rights and obligations at international law, but also those actors that have the competency to *create* international law.¹²⁸

Due to economic, political, and cultural shifts in the last half century, the legal personality of other entities—corporations, for example—has been considered.¹²⁹ However, international environmental law rarely addresses private actors, such as corporations, directly, despite corporations' impact on the environment.¹³⁰ Instead, international law usually addresses traditional state actors, imposing "at least three different types of obligations: obligations to refrain, obligations to prevent, and obligations to preserve."¹³¹ Obligations to refrain bar states from conduct that is harmful to the environment and may include actions relating to transboundary pollution, hazardous waste dumping, atmospheric pollution, ecosystem destruction, and more.¹³² States must implement these

¹²⁴ Matz-Luck, *supra* note 117.

¹²⁵ *Id.*

¹²⁶ Markus Wagner, *Non-State Actors*, in MAX PLANCK ENCYCLOPEDIAS OF INT'L L., <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1445?prd=OPIL#law-9780199231690-e1445-div1-1> (last updated July 2013).

¹²⁷ James E. Hickey Jr., *The Source of International Legal Personality in the 21st Century*, 2 HOFSTRA L. & POL'Y SYMP. 1, 18 (1997), https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1564&context=faculty_scholarship.

¹²⁸ ROLAND PORTMANN, LEGAL PERSONALITY IN INTERNATIONAL LAW 8 (2010), <https://www.cambridge.org/core/books/legal-personality-in-international-law/1E1B901F4DB5ED7392CB55B2658526A7>.

¹²⁹ Hickey, *supra* note 127, at 2–3.

¹³⁰ THILO MARAUHN, *Pt. VI Actors and Institutions, Ch.31 Changing Role of the State*, in THE OXFORD HANDBOOK OF INT'L ENVTL. L. 727, 734 (Daniel Bodansky et al. eds., 2008), <https://opil.ouplaw.com/view/10.1093/law/9780199552153.001.0001/law-9780199552153-chapter-31#law-9780199552153-div2-257>.

¹³¹ Marauhn, *supra* note 130.

¹³² *Id.*

obligations domestically in order to have any effect on private actors.¹³³ Obligations to prevent require states to bar private actors from environmentally harmful conduct domestically, necessitating the passage of legislation, establishment of administrative infrastructures, or the use of criminal law.¹³⁴ Lastly, obligations to preserve go beyond mere prevention of environmental harm and bind states to implement improvements—or other measures—necessary to protect and preserve a particular part of an ecosystem.¹³⁵

Traditionally, states are responsible for breaches of international environmental law, even if private actors commit the violations.¹³⁶ The effectiveness of the state responsibility approach is limited, however, as “even when the facts and causal links are clear, there may be no recourse to the law of state responsibility . . . [and] [r]etorsions and reprisals are not really an option in the case of common goods”¹³⁷ As a result, the role of states in international environmental law has become less dominant and the roles for non-state actors have grown.

iii. Corporations at International Law

In most municipalities, corporations are legal persons with rights, duties, and capacities at law.¹³⁸ Internationally, however, corporations are considered non-state actors possessing *some* legal capacity under international law, but not full legal personality like states.¹³⁹ The source of corporations’ legal personality in international law is unresolved.¹⁴⁰ This uncertainty poses fundamental questions regarding how corporations may claim rights to interact with and form international law.¹⁴¹ One international environmental expert, James E. Hickey, Jr., describes the three broad classifications that have emerged to identify the source of non-state actors in international law and the resulting implications: the legal traditionalist approach, the factual realist approach, and the dynamic state approach.¹⁴²

The legal traditionalist approach gives primacy of international legal personality to states and requires new international non-state actors to establish that they derive international legal personality directly from their home states in order

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 735.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Portman, *supra* note 128, at 7–8.

¹³⁹ Wagner, *supra* note 126.

¹⁴⁰ Hickey, *supra* note 127, at 12.

¹⁴¹ *Id.*

¹⁴² *Id.*

to have legal standing.¹⁴³ The non-states' international legal personality "must be discernibly transferred from states to the nonstate entity through some legal instrument, general principle of law, or rule of customary international law."¹⁴⁴ With the legal personality of the non-state actor "firmly tether[ed]" to the state's international legal personality, this approach treats non-state actors "no differently than non[-]state entities are treated under municipal law, at least as to the legal source of their rights and duties."¹⁴⁵

The factual realist approach asserts that states are weakening and becoming less important as international actors, while non-state actors are increasingly influential and significant in international law.¹⁴⁶ This perspective considers the states' responses to new international problems as "passive-reactive" and out-of-date.¹⁴⁷ On the other hand, non-state actors, including corporations, are "exercising growing influence in reshaping international law to respond to changes in international society."¹⁴⁸ Additionally, this perspective acknowledges the increasingly globalized, mobilized, and technological world. Consequently, according to the factual realist approach, non-state actors should be able to assert their own international legal personalities and capacities once an entity has demonstrated its ability to influence the substance and procedure of international law.¹⁴⁹

Finally, the dynamic state approach is the middle ground between the traditionalist approach and the factual realism approach.¹⁵⁰ Dynamic state proponents view the state as "a dynamic and resilient entity that is increasingly responsive to changes in international facts."¹⁵¹ Evidenced by moving away from absolute state sovereignty to popular sovereignty, directly and impliedly conferring power and competence to regional and international organizations to address various international issues, and for allowing, in various contexts, non-state actors to participate in international law fora over time.¹⁵² These adaptations by states conform to the dynamic state approach, which suggests that states retain the capacity and authority to remain the ultimate source of international legal capacity.¹⁵³ Non-state actors, like corporations, must discern some international treaty, custom, or general principle of law that confers to it any international legal

¹⁴³ *Id.* at 13.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 14.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 15.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 16.

¹⁵¹ *Id.*

¹⁵² *Id.* at 16–17.

¹⁵³ *Id.* at 17.

personality.¹⁵⁴ Without a discernable source of international legal personality, non-state actors would usurp the state's formal representation, which would "cut off [the state] at the municipal law pocket by doing away with the state as the ultimate source of international legal personality."¹⁵⁵

Although states are no longer viewed as the only entities with international legal personality—having the rights and duties of and capacity to create international law—the source and role of non-state actors, like corporations, is in flux.¹⁵⁶

IV. ANALYSIS OF POSSIBLE SOLUTIONS

The evolving nature of the fashion industry pressures companies to adopt a fast fashion model. Although some fashion companies have elected to adopt more sustainable practices, the lack of binding international regulation over the various parts of the supply chain creates little incentive for many companies. To create international legal standards that bind fashion corporations to environmentally responsible systems, industry leaders need to adopt a more developed, comprehensive, and incentivizing agreement. This section of the Note first discusses that industry leaders—as opposed to state actors—are those best situated to craft comprehensive agreements that address the different elements of the garment supply chain. This section will then discuss how industry leaders can better incentivize industry-wide participation in the agreement's goals and regulations. This Note will then discuss how the agreement should approach each part of the supply chain to comprehensively address its issues. Lastly, this Note will discuss how an agreement between industry leaders should create enforcement mechanisms to ensure compliance and create accountability.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See generally* Wagner, *supra* note 126 (explaining the evolution and rise of non-state actors and their effect on the international legal landscape).

A. *Industry Leaders as the Best-Suited Actors to Solve the Problem*

i. *Why States Cannot Solve the Garment Industry's Issue*

Although states are the traditional actors in international law capable of forming binding international treaties, states are not the most appropriate actors to solve the garment industry's issues for several reasons.

The Paris Agreement is a helpful analogue in understanding why state efforts through traditional methods of international law to address environmental issues are insufficient. The Paris Agreement purports to “combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future.”¹⁵⁷ The Paris Agreement does not relate specifically to the fashion industry.¹⁵⁸ Rather, the Paris Agreement “requires all Parties to put forward their best efforts through ‘nationally determined contributions’ (NDCs) and to strengthen these efforts in the years ahead.”¹⁵⁹ Under the Agreement, states determine the NDCs it will achieve through domestic mitigation measures.¹⁶⁰ Mitigation is defined as the efforts by the state in “decreasing the amount of emissions released into the atmosphere and in reducing the current concentration of carbon dioxide (CO₂) by enhancing sinks (e.g. increasing the area of forests).”¹⁶¹ The Paris Agreement, created in 2015, approached the end of its first five-year cycle in 2020.¹⁶² At the end of each five-year cycle, Parties are expected to update and revise their pledges of NDCs, hopefully increasing their ambitions.¹⁶³ Although the Paris Agreement is a legally binding instrument created under a framework convention involving the traditional international actors of states,

¹⁵⁷ *Key Aspects of the Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement/key-aspects-of-the-paris-agreement> (last visited March 30, 2021).

¹⁵⁸ See generally Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement], https://unfccc.int/sites/default/files/english_paris_agreement.pdf (stating no explicit duty for the international community regarding collaborative climate control initiatives in the fashion industry).

¹⁵⁹ Paris Agreement art. 4; see also *Climate: Get the Big Picture*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/resource/bigpicture/#content-the-paris-agreemen> (last visited Nov. 28, 2019).

¹⁶⁰ Paris Agreement, *supra* note 158, art. 4, ¶ 3.

¹⁶¹ U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, *supra* note 159.

¹⁶² Henry D. Jacoby & Jennifer Morris, *Why the Next Two Years are Critical for the Paris Climate Deal's Survival*, CONVERSATION (Dec. 4, 2018), <http://theconversation.com/why-the-next-two-years-are-critical-for-the-paris-climate-deals-survival-107931>.

¹⁶³ *Id.*

“some parts of the deal are legally binding and some aren’t.”¹⁶⁴ Parties are required to create and submit NDCs, report their greenhouse gas emissions, and “communicate the finance and other support given to developing countries to help meet their respective NDCs.”¹⁶⁵ Effectuating their promises requires Parties to implement domestic policies that impose regulations and standards to which private industry actors must comply.¹⁶⁶ This legislation would have to go through the traditional political process, which may be laden with inefficiencies, pretexts, and polarization. Domestic legislation would, in theory, capture the behavior of fashion companies among other industries.

This approach fails because, although the Paris Agreement does include some mandatory obligations, it does not include any enforcement mechanisms.¹⁶⁷ Despite the lack of enforcement mechanisms, the United Nations claims Parties will comply because it is in their interest to show global solidarity and that any short-term gain of not implementing the agreement is not worth it.¹⁶⁸ However, as of early November 2019, former U.S. President Donald Trump notified the U.N. of the United States’ intention to leave the Paris Agreement.¹⁶⁹ While the move has been widely condemned, experts “fear the effect the Trump administration will have on climate protections in the meantime.”¹⁷⁰ Currently, the United States “contributes about [fifteen percent] of global emissions of carbon dioxide, but it is also a significant source of finance and technology for developing countries in their efforts to fight rising temperatures.”¹⁷¹

Further, in a new report, scientists urge that many countries are not on track to meet their NDC pledges by 2030.¹⁷² Additionally, almost 75% of the pledges “are partially or totally insufficient to contribute to reducing [greenhouse gas] emissions by fifty percent by 2030.”¹⁷³ The report acknowledges that the Paris

¹⁶⁴ Timmons Roberts & Angelica Arellano, *Is the Paris Climate Deal Legally Binding or Not?*, CLIMATE HOME NEWS (Feb. 11, 2017), <https://www.climatechange-news.com/2017/11/02/paris-climate-deal-legally-binding-not>.

¹⁶⁵ *Id.*

¹⁶⁶ See *Legal Issues Related to the Paris Agreement*, CTR. FOR CLIMATE AND ENERGY SOLS. (May 2017), <https://www.c2es.org/site/assets/uploads/2017/05/legal-issues-related-paris-agreement.pdf> (discussing the non-self-executing nature of the Paris Agreement).

¹⁶⁷ Roberts & Arellano, *supra* note 164.

¹⁶⁸ *The Paris Agreement: Frequently Asked Questions*, SUSTAINABLE DEV. GOALS, <https://www.un.org/sustainabledevelopment/blog/2016/09/the-paris-agreement-faqs/> (last visited Nov. 28, 2019).

¹⁶⁹ *Paris Climate Accords: US Climate Accords: US Notifies UN of Intention to Withdraw*, BBC NEWS (Nov. 5, 2019), <https://www.bbc.com/news/world-us-canada-50297029>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Stephen Leahy, *Most Countries Aren’t Hitting 2030 Climate Goals, and Everyone Will Pay the Price*, NAT’L GEOGRAPHIC (Nov. 5, 2019), <https://www.nationalgeographic.com/science/2019/11/nations-miss-paris-targets-climate-driven-weather-events-cost-billions/>.

¹⁷³ ROBERT WATSON ET AL., *THE TRUTH BEHIND THE CLIMATE PLEDGES* (2019), <https://drive.google.com/file/d/1nFx8UKTyjEteYO87-x06mVEkTs6RSPBi/view>.

Agreement is the first collective effort by all countries to address climate change, but laments that not much has changed yet and global emissions continue to rise.¹⁷⁴ In sum, traditional international legal tools involving traditional international actors may still fall short in adequately regulating the environmental conduct of private actors, including fashion corporations.

ii. Garment Industry Leaders as the Better Suited Actors to Address the Problem

Private actors involved in the garment industry are best-suited to address the environmental practices of the supply chain for several reasons.

First, garment industry actors are better situated than states to address the complexities of the textile supply chain because they are active participants in the process. Global clothing companies understand the business conditions that push clothing companies to outsource various parts of the supply chain, as well as the inherent pressures and incentives affecting the parties involved. A single piece of clothing may be sourced from various textiles that were all grown in different countries, processed and treated in different factories with different chemical processes, stitched and sewn in multiple pieces before being combined into a final garment, and then finally packaged and shipped to its final destination. With each garment undergoing its own unique journey on the supply chain across multiple countries, addressing the inherent issues of that supply chain is more appropriate for the companies who work transnationally through the process, not states who may only have a degree of control over domestic industry practices.

Second, the apparel industry is better suited to be the actor of change with environmental practices because of the need for and powerful tool of transparency in the supply chain. Binding states through an international treaty to disclosure requirements for industry actors is an inefficient way to compel companies to provide information to consumers. States would first have to go through the treaty-making process, ratification process, and subsequent domestic legislation in order to effectuate any such policies. Even then, states would have to formulate disclosure rules for an industry in which they are not experts on a very complex process. Not only would this subject disclosure policies to go through the political process, but it would create a patchwork of standards among state actors, creating a complex web of disclosure requirements for multiple states in which one company could be doing business. The inefficiency could be avoided by encouraging a more cohesive standard of disclosure and transparency amongst the apparel industry *originating* from apparel industry actors who are more familiar with the complexities of the supply chain.

¹⁷⁴ *Id.* at iii.

Further, apparel industry actors have existing relationships with the growers, suppliers, processors, manufacturers, and governments all related to the different parts of the supply chain. This existing network of working relationships with aligned interests facilitates a better opportunity for collaborative and mutually beneficial industry reform. When state regulators' primary interest is making regulations that comply with an international agreement, different actors in the garment industry supply chain share the primary interests of promoting sustainable, long-term profits and positive consumer relations. Further, when the interests of garment industry actors are aligned, each part of the supply chain has a greater incentive to cooperate in reform designed to advance those interests through the lens of environmental sustainability.

Because the apparel industry has the expert knowledge on the complexities of the supply chain, the existing transnational working relationships with the relevant actors, the more efficient bargaining abilities, and the aligned long-term interests, garment companies are better suited to reforming the industry's environmental practices. Some industry leaders have tried to accomplish this through the Milestone Fashion Charter for Climate Action. However, as discussed earlier in this Note, the Fashion Charter fails to adequately deliver an effective solution. Therefore, garment industry leaders should build on the Fashion Charter by incentivizing industry-wide participation, addressing the various methods of improving the practices in the supply chain, and utilizing enforcement mechanisms to ensure compliance.

B. How Industry Leaders Can Incentivize Participation in an Agreement

i. Market Incentives Will Push Retailers

As consumers demand more sustainability from fashion brands, fashion brands will be more incentivized to participate and commit to environmentally responsible practices and adhere to consumer expectations.

Consumers are becoming increasingly aware of the fashion industry's environmental impact and actively searching for more sustainable brands. In 2019, consumer searches illustrated the growing demand for sustainable fashion brands.¹⁷⁵ Consumer searches for "sustainability-related keywords soared 75[%] year-on-year, with an average of 27,000 sustainable fashion searches made each

¹⁷⁵ Huw Hughes, *Sustainability, Off-White and Meghan Markle: Fashion Highlights of 2019*, FASHION UNITED (Nov. 26, 2019), <https://fashionunited.uk/news/fashion/sustainability-off-white-and-meghan-markle-fashion-highlights-of-2019/2019112646376>.

month.”¹⁷⁶ Fashion influencing websites like Lyst and Pinterest have reported consistently increasing searches by consumers for sustainable fashion brands,¹⁷⁷ indicating the consumer demand for sustainable options.

Fashion companies who are making an effort to reform the industry can further propel the consumer demand for sustainable brands by launching information campaigns and promoting transparency. When companies who are making efforts to improve their environmental impact can inform consumers on what they had been doing before and how they are taking steps to do better, they are signaling to consumers an industry-wide problem. If a brand with organic cotton t-shirts illustrate why organic cotton is important for the environment, it furthers its own marketing while also educating consumers on how the choice to purchase an organic cotton t-shirt has a substantial effect on the fashion industry's environmental impact. Companies already making sustainable choices can use information campaigns to deepen consumer knowledge and propel consumer demand for sustainable practices across the industry.

At the G7 summit in August 2019, thirty-two fashion companies comprised of 150 brands signed onto the coalition of brands under a new Fashion Pact.¹⁷⁸ The Fashion Pact is “a set of shared objectives the fashion industry can work toward to reduce its environmental impact.”¹⁷⁹ The pact sets a few objective goals and promotes collaboration, rather than competition, among fashion companies to find solutions achieving its goals.¹⁸⁰ Although the pact is susceptible to the same critiques of the U.N. Climate Change's Fashion Charter, it signals the need for industry change to consumers and highlights those brands who are working towards it.

In the midst of many large fashion companies making public efforts to enact industry change, those brands who are not making efforts towards sustainability may feel pressure from growing consumer awareness. Further, fast fashion companies face increasing scrutiny from consumers concerning their environmental impact.¹⁸¹ For these reasons, going beyond information and education campaigns and establishing an industry watchdog group may advance consumer demand for sustainability. An organization that inspects, analyzes, and publishes a grade or

¹⁷⁶ *Id.*

¹⁷⁷ Isabelle Lane, *From Fast Fashion to 'Trashion': Why the 2020s Will Be the Decade of Sustainable Fashion*, NEW DAILY (Jan. 5, 2020), <https://thenewdaily.com.au/finance/consumer/2020/01/05/sustainable-upcycled-fashion/>; Olivia Pinnock, *Sustainable Fashion Searches Surged in 2018*, FORBES (Nov. 20, 2018, 1:00 AM), <https://www.forbes.com/sites/oliviapinnock/2018/11/20/sustainable-fashion-searches-surged-in-2018/#3ef90b9b5fe7>.

¹⁷⁸ Emily Farra, *150 Brands Have Joined Emmanuel Macron's "Fashion Pact" to Make the Fashion Industry More Sustainable*, VOGUE RUNWAY (Aug. 26, 2019), <https://www.vogue.com/article/fashion-pact-sustainability-g7-summit-emmanuel-macron>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Lane, *supra* note 177.

report on fashion companies that do not adopt sustainable practices may further compel consumers to choose different brands and incentivize non-willing fashion companies to change their ways.

ii. Economic Incentives Will Push Suppliers

While consumer demand will most effectively motivate and change the behavior of fashion companies, this pressure will fail to address the needs and incentives of different actors involved in the supply chain. An agreement between fashion companies should implement economic incentives for suppliers that not only motivate suppliers to adopt sustainable practices despite a lack of local regulations, but also develop more sustainable infrastructure for those suppliers.

Where many actors in the supply chain are located in the world's developing economies, suppliers are more susceptible to participating in environmentally detrimental practices when it furthers their ability to produce quickly and cheaply. The suppliers' motivation to engage in environmentally detrimental practices is further compounded by the frequent lack of local labor or environmental regulations in suppliers' home states. To motivate suppliers to adopt certain behaviors, industry leaders should consider investing into the sustainable development of those suppliers who are willing to comply with an ethical and environmental code of conduct.

For example, if Nike requires each supplier in its supply chain to work with local environmental groups to form a code of conduct and to report its performance with adhering to such code, Nike could, in turn, promise to invest into technologies and training programs that will help develop more long-term sustainable infrastructure for that supplier. For Nike, the company can ensure that it is taking every step to create a responsible and transparent process for each part of the supply chain, which then allows the company to release an acceptable supply chain disclosure to consumers. Nike will also be able to ensure its own economic and environmentally sustainable future by contributing to the efficiency and capacity-building of its suppliers. For the suppliers, striking such a deal with Nike would give it a competitive edge to other brands looking to make partnerships with suppliers who have an environmentally sustainable track record. Complying with standards sought by the fashion company relieves the supplier of pressure to perform as quickly and cheaply as possible. Lastly, the supplier can maximize its long-term productivity and marketability by securing investment into sustainable infrastructure.

While consumer pressures will motivate fashion retailers and brands to seek sustainable practices, industry leaders will need to incentivize participation in every part of the supply chain through economic incentives.

C. Formulating a Better Treaty with a Comprehensive Supply-Chain Approach

Forming an effective agreement among fashion industry actors requires addressing each part of the supply chain and incorporating existing soft law and NGO tools. Specifically, the agreement should address the producing, processing and manufacturing of textiles, the washing and caring for garments, and the disposal of garments.

i. Producing, Processing, and Manufacturing Textiles

As discussed earlier, much of the environmental impact of the fashion industry occurs in the growing, processing, and manufacturing of textiles. In order to adequately address this portion of the supply chain, garment companies should invest into sustainable sourcing of natural or recycled textiles, reduce the use of non-biodegradable or non-recyclable textiles, address the chemicals used in the processing of the textiles, and utilize certification boards to create standards for the various processes involved.

Choosing better materials is the first step fashion companies should consider in adopting more sustainable practices. The ideal fashion industry agreement would require apparel companies to source only those materials sustainably grown and gathered. For a textile like cotton, sourcing only sustainable materials would require that fashion companies consider using organic cotton when available, to select cotton-growing processes that are the least damaging to the arable land, and avoid harmful pesticides that are commonly used on non-organic cotton crops. Requiring companies to perform due diligence in sourcing materials ultimately empowers fashion brands to then share this information with consumers, further educating and empowering consumers.

Sourcing better materials requires fashion companies to reduce their use of non-biodegradable and non-recyclable textiles that ultimately end up in the landfills. Addressing the massive problem of garment disposal requires companies to make clothing from textiles that will break down in landfills, like natural fibers, or are recyclable. Many synthetic fibers, like polyester, are made from plastic and are designed to virtually never biodegrade.¹⁸² Limiting the use of polyester is an essential step of any sustainable effort in the fashion industry. This is particularly true because polyester sheds microplastics whenever washed which

¹⁸² Claudio, *supra* note 30.

contributes to the contamination of oceans and rivers.¹⁸³ Any agreement should help wean companies off of polyester and other non-biodegradable textiles by promoting investment and development into textiles with comparable capabilities and better environmental impacts, like hemp, fish leather, Tencel, and flax.¹⁸⁴

An agreement should also encourage the use of recyclable textiles whenever possible in order to reduce the amount of clothing that ultimately ends up in landfills. When garments are made from a textile blend—fifty percent cotton and fifty percent wool, for example—they cannot be recycled using chemical recycling.¹⁸⁵ Cotton and wool are both recyclable fibers alone; however, when blended into a textile, they cannot be recycled together.¹⁸⁶ Instead, some sort of technology would have to pull the fibers apart to recycle them separately, and unfortunately, that technology does not yet exist.¹⁸⁷

An effective fashion agreement should also address the chemical treatments used in the processing of the materials. The agreement should work with certification boards to identify the best practices for each chemical process used and for suggestions for better alternatives. The goal should be to gain an understanding of the effects of the chemicals used from multiple points in the garment's lifecycle: the exposure to the workers using it, the disposal of the chemical waste after the use, the exposure to consumers when wearing the treated garment, any runoff from washing the garment, and the chemical process when the garment is recycled or in a landfill. Understanding the effects of the chemicals used in processing materials is essential to understanding and fixing the detriments to human health and the environment.

Lastly, an effective fashion industry agreement should utilize the expertise and standards of the certification boards. These certification boards alone are an ineffective and cumbersome way to help consumers pick better garments. They are often only speaking to one part of many processes for one garment, and their meanings may ultimately be unclear to a consumer. However, were the fashion industry able to compile the research and best practices produced by these

¹⁸³ Cline, *CONSCIOUS CLOSET*, *supra* note 1, at 163–64.

¹⁸⁴ Vanessa Zdesar, *4 Eco-Friendly Alternatives for Commonly Used Textiles*, SYNZENBE (May 23, 2016), https://www.synzenbe.com/blog/4-eco-friendly-alternatives-for-commonly-used-textiles/397?utm_source=lesouk.

¹⁸⁵ *Close The Loop*, DESIGN FOR LONGEVITY, <https://designforlongevity.com/articles/close-the-loop> (last visited June 9, 2021) (explaining that while possible in small quantities in the mechanical recycling process, garments comprised of different fibers are unable to be recycled in the chemical recycling process).

¹⁸⁶ *See id.*

¹⁸⁷ Leonie Barrie, *Breakthrough in Recycling Fabric Blends into New Fibres*, JUST-STYLE (Sept. 12, 2017), https://www.just-style.com/news/breakthrough-in-recycling-fabric-blends-into-new-fibres_id131640.aspx (explaining that while there is currently “no commercially viable separation, sorting, and recycling techniques for many of the most popular materials, such as cotton and polyester blends,” researchers are experimenting with new ways of recycling blended textiles).

certification boards into a comprehensive code of conduct, the information would become more useful and easily accessible by fashion companies and consumers alike. By centralizing the information and endorsing expert opinions on current best standards, the fashion industry would be able to effectively self-govern and create accountability for all parties involved.

Lastly, the fashion industry should prioritize creating garments that are built to last more than the average ten wears.¹⁸⁸ The disposability of clothing perpetuates the detrimental consumption and waste problem propelling the fast fashion model and, as a result, plagues the environment. By prioritizing well-constructed garments, the fashion industry can start to reset the outlook on clothing consumption from one of disposability to one of sustainability.

ii. Washing and Caring for Garments

In order to reduce the increased impact of the garment industry on the environment, fashion brands should take greater steps to educate consumers about the proper care and washing of garments to minimize environmental impact.

The longer a consumer can keep a garment wearable, the longer before that consumer will have to dispose of the garment and replace it. Proper care of the garment may go a long way to promoting its longevity.

iii. Garment Disposal

Garment disposal is one of the most important contributing factors of the fashion industry's environmental impact, and it must be addressed by an effective fashion industry agreement. Two ways in which an agreement should address this part of the lifecycle of the garment is through the promotion of repair programs and recycling programs.

Repair programs allow consumers to hold onto garments for longer by promoting repairs instead of disposal.¹⁸⁹ Some sustainable fashion brands have already implemented repair programs with much success.¹⁹⁰ For example, Patagonia's repair and education program on jackets has proven successful, profitable,

¹⁸⁸ See Pierre-Louis, *supra* note 45.

¹⁸⁹ Arthur Friedman, *These Companies Are Making Strides to Extend Clothing Life to Curb Textile Waste*, SOURCING J. (Oct. 31, 2017, 6:08 PM EST), <https://sourcingjournal.com/topics/raw-materials/textile-recycling-evolving-repair-reuse-extend-clothing-life-74101/>.

¹⁹⁰ See *id.*

and has garnered positive media attention.¹⁹¹ Fashion industry leaders should prioritize longevity of their garments through promoting comparable repair programs.

Similarly, recycle programs give consumers another option instead of throwing the garment into the garbage. Some fashion brands have started recycling programs where retailers “have set up donation bins in their stores, and will reward customers with gift cards and coupons for every donation they make.”¹⁹² Some brands even buy back clothing to repair and resell, like the Patagonia Recrafted by Worn Wear Program.¹⁹³ These programs allow consumers to dispose of unwanted clothing without the products ending up in landfill and they allow fashion companies to give the textile new life.

An effective fashion charter will need to push fashion companies towards these repair and recycling programs in order to adequately address the environmental problems of the industry. The fashion companies pioneering these programs have shown they can be successful and profitable.

D. Creating Enforcement Mechanisms to Hold Industry Participants Accountable

In order to successfully self-govern, the fashion industry agreement will need enforcement mechanisms. Some possible ways of creating accountability in the agreement would be to require full transparency for the full supply chain and to fine companies for non-compliance.

i. Requiring Full Transparency

Essential to an ideal self-governance agreement for the fashion industry is the requirement of full transparency. Full transparency allows industry partners,

¹⁹¹ Rhett Power, *Win Hearts and Wallets Like Patagonia by Giving New Life to Old Products*, INC. (Jan. 10, 2020), <https://www.inc.com/rhett-power/win-hearts-wallets-like-patagonia-by-giving-new-life-to-old-products.html>.

¹⁹² Emily Ruane, *These Sustainable Retailers Will Reward You for Recycling Your Clothes*, REFINERY29 (Mar. 8, 2019, 4:09 PM), <https://www.refinery29.com/en-us/retailers-recycle-clothing>.

¹⁹³ *Recrafted*, PATAGONIA: WORN WEAR, https://wornwear.patagonia.com/recrafted?utm_source=google&utm_medium=cpc&utm_content=text%20ad&utm_campaign=Brand%20-%20Used%20Clothing&gclid=CjwKCAiAx_DwBRAfEiwA3vwZYnL8fWSa8IwE33ThwEQKLiv8tirthLPHjsaIx70XYWkqpMiVo2-5ERoCF1gQAvD_BwE# (last visited Jan. 12, 2020).

consumers, and suppliers to keep fashion brands accountable. While transparency allows brands to brag about all the great strides they have taken for accountability, not adhering to sustainable practices exposes fashion brands to negative publicity and scrutiny. Additionally, transparency in the process allows for the opportunity for creative problem solving and collaboration where compliance is exposed to be unachievable for some logistical reason. Without a commitment to full transparency, the agreement would lack any real means of accountability.

ii. Fining for Non-Compliance

Where companies fail to comply with the code of conduct, the agreement should contemplate fines that will offset the environmental impact of the noncompliance. Where a company opts for a non-organic cotton over organic cotton, that company should be fined an appropriate amount to offset the damage to the arable land that is caused by that choice. If manufacturers choose non-organic cotton based on its lower price, the imposition of fines to offset environmental damage may alter out the cost-benefit analysis of the initial choice and even out the ultimate costs of working with organic or non-organic cotton.

E. Pricing and Accessibility

i. Changing Consumer Expectations for Pricing

Consumers may want sustainable options and the fashion industry may be willing to move in that direction, but the biggest barrier to the transition from fast fashion to sustainable fashion is the *price*. Consumers have been looking for cheaper and cheaper options for years and have grown accustomed to the low prices associated with clothing produced by fast fashion companies.¹⁹⁴ Adjusting the expectations surrounding price will be one the most significant changes. However, as more companies switch to sustainable processes throughout the supply chain, the scale of economies will hopefully push prices down to remain accessible to consumers.

¹⁹⁴ Gil Don, *How Retailers Can Spur Consumers To Ditch Fast Fashion*, FORBES (Dec. 11, 2019, 8:00 AM EST), <https://www.forbes.com/sites/forbesbusinesscouncil/2019/12/11/how-retailers-can-spur-consumers-to-ditch-fast-fashion/?sh=81d2b969b5a3>.

ii. Promoting Accessibility to Sustainable Fashion

While many consumers may have a growing awareness and desire to consume sustainably, not all consumers will be able to pay the prices associated with sustainable garments. As mentioned, the increased movement towards sustainable clothing will hopefully drive prices down to become somewhat more accessible; however, refurbished programs may be a good option for consumers who cannot spend more. The North Face, for example, has a program called *The North Face Renewed*, which takes older jackets, professionally cleans and repairs them, and then resells them on their website at a substantially discounted price.¹⁹⁵ Programs like these can help the sustainable clothing movement to be inclusive of more price-conscious consumers.

Ultimately, however, consumers will have to readjust to pricing for sustainable clothing because the prices of fast fashion were *never* realistic. Fast fashion prices are so low because fashion companies cut corners during the supply chain, often by making choices that have severe environmental impacts.¹⁹⁶ Changing consumer behavior and readjusting consumer expectations regarding pricing will be a substantial challenge, but confronting clothing pricing is a necessary part of reforming the industry.

V. CONCLUSION

Ultimately, the fashion industry is a business, and any substantial reform will only voluntarily occur if consumers demand it. Luckily, consumers are becoming increasingly aware of the climate crisis and how the fashion industry contributes to it. However, the garment industry is a complex web of transnational relationships, motivations, and infrastructures. The complexity of the supply chain creates a massive burden for consumers who want to buy clothes responsibly but are virtually unable to gain the information and expertise necessary in order to do so. Fashion industry leaders should alleviate the burden on consumers who want sustainable clothing by committing to transparency and collaboratively self-governing.

Transparency is a key element to effectively building a self-governance structure within the fashion industry. Consulting experts, like the certification boards,

¹⁹⁵ *The North Face Renewed*, NORTH FACE RENEWED, <https://www.thenorthfacerenewed.com/pages/about-us> (last visited Jan. 10, 2020).

¹⁹⁶ See Arriana Towner, *Fast Fashion May Be Cheap, But It Comes At A Cost*, EARTH ISLAND J. (Nov. 26, 2019), <https://www.earthisland.org/journal/index.php/articles/entry/fast-fashion-may-be-cheap-but-it-comes-at-a-cost/>.

and forming information campaigns targeted at consumers will not only further the bottom-line of fashion brands who are working to tout their commitment to sustainability, but it will also empower consumers who actively seek to consume more sustainably. Transparency in the supply chain for garments will propel the movement towards sustainable fashion, but it will also create a system of accountability and serve as a useful enforcement mechanism for those already involved.

Collaboration will also be an essential element to establishing a successful fashion industry agreement. Collaboration will have to come from fashion companies, environmental groups, suppliers in the supply chain, and certification boards amongst others in order to create a coherent, comprehensive code of conduct and system of accountability. Where logistical issues arise, these partners can work to find the most economically efficient and environmentally sustainable solutions. This collaborative process is necessary for industry reform.

Self-governance in global industries may be a more effective way of enacting wide-spread change. However, effective self-governance relies on aligned interests between consumers and industry. Furthermore, self-governance requires these interests to align with environmental and infrastructure realities. Yet, if all relevant parties can collaborate to form an agreement that is responsive, comprehensive, and enforceable, the fashion industry can reform itself from one of the most polluting industries in the world to something revolutionary.