

Two instruments of international law for effective enforcement of the

Paris Agreement:

International criminal law and "ius cogens"

Speech by lawyer Gisela Toussaint at the demonstration of Extinction Rebellion in Berlin in front of the Brandenburg Gate on 7.10.2020

The greatest threat to all mankind is undoubtedly the climate catastrophe.

Without immediate and massive countermeasures, as decided in the Paris Agreement, various climate tipping points will be exceeded, leading to a very rapid global heating of the earth.

As a result, all of humanity would lose its existential basis for life within a few decades and be completely wiped out.

The problem we all face is that the governments are hardly implementing the Paris Agreement at all and that massive profit interests, especially of the fossil industry, have so far been very successful in preventing this.

The climate-protection-focused transformation of the world economy agreed upon in the Paris Agreement as well as the protection of the CO₂ reservoirs (especially rainforests) to save humanity, as agreed upon in Art. 5, will not be implemented by governments, industry and investors with the necessary speed and radicalism to keep the agreed upon and vital goal of slowing down global warming at 1.5°. On the contrary, many governments and corporations are actively and massively violating the obligations of the Paris Agreement and are even further heating up global warming.

Therefore, the whole of humanity is not only threatened by the occurrence of unbearable living conditions from about 2100 onwards, as many claim to deny an acute urgency, but already from about 2050 onwards due to various acutely threatening climatic catastrophe tipping points.

In particular by the massive industrial destruction of the Amazon rainforest, which is about as large as Australia, there is an acute threat of exceeding three irreversible climatic catastrophe tipping points with very soon devastating consequences for the entire world climate and the existence of mankind:

- **1st tipping point** : From a 20-25% destruction of the Amazon rainforest, scientists expect the irreversible collapse of the entire evapotranspiration system (rain system) of the Amazon. In June 2020 the destruction was already about 20%.

- **2nd tipping point** : Due to this collapse and the desertification of the rainforest, the global CO₂ system will also lose a gigantic CO₂ storage capacity, which has so far decisively relieved the system.

- **3rd tipping point** : At the same time the dying rainforest emits gigantic additional amounts of CO₂, so that the previous calculations about a remaining global CO₂ budget collapse and the Paris Agreement can practically no longer be kept under any circumstances.

But the UNO lets the rain forest continue to burn month by month. The Amazon rain forest might have already exceeded all three climatic disaster tipping points since approx. August 2020 and cannot be saved any longer. Currently, over 32,000 criminally set fires were registered in September 2020.

So far the only solution strategy of the UN: Appeal to all governments, corporations and investors to comply with and implement the Paris Agreement.

However, this appeal strategy of the UN obviously does not work.

Other instruments of international law with which the implementation of the Paris Agreement could be enforced are supposedly not available. Above all, it is said that the Paris Agreement is not binding at all and that there are no sanctions in the Agreement to force its implementation.

When I sign a sales contract for a washing machine, the contract only states what the parties to the contract have committed themselves to, but not what would happen if, for example, the seller cheated me or I paid with counterfeit money. The legal consequences of such a breach of contract and punishable behaviour are not in the contract of sale but in the penal code.

And no one would think that the purchase contract and its obligations to act are not binding just because the contract does not contain any sanctions against the contracting parties.

On the contrary, there is already a supreme court decision in the Netherlands that the government as a party to the Paris Agreement is in principle obliged to implement the reduction target of the Paris Agreement (Urgenda). And the Supreme Court in Great Britain ruled at the beginning of 2020 that the government should have taken the reduction target of the Paris Agreement into account in decisions such as an airport expansion and that the expansion decision is therefore illegal (Heathrow).

With regard to possible sanctions under international law, I looked at the International Criminal Code to see if there is a criminal offence that makes the destruction of all of humanity a punishable offence.

For this is, as is well known, the consequence of the non-fulfillment of the Paris Agreement or the massive violation of the Paris Agreement.

I: Instruments of international criminal law:

And in fact there is a "suitable" form of committing two types of international crimes:

Article 6 Rome Statute:

Genocide

For the purpose of this Statute, "genocide" means ...acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: ...

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Article 7 Rome Statute:

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ...

(b) Extermination;

2. For the purpose of paragraph 1: ...

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

Due to the non-fulfillment of the countermeasures against the climate catastrophe decided upon in the Paris Agreement, it is allowed and even fired unchecked as lethal earth heating. By failing to comply with the Paris Agreement, the governments (CEOs and investors) put the world community "under the deadly living conditions of global warming, which are capable of destroying the world population as a whole.

Subjectively, genocide requires "intent" and crimes against humanity only "conditional intent".

Conditional intent, i.e. the acceptance of the foreseeable consequences of one's actions (here co-causing deadly climate collapse), can be proven at all times by governments, corporations and investors.

That recognized now also the legal department of Greenpeace international, after Elias Pfeffer of the international group FFF-ICC Climate Action <https://www.fridaysforfuture-iccclimateaction.org/> explained them that in detail. They want to submit now likewise a international law charge against Bolsonaro because of crimes against humanity by substantial offence against art. 5 Paris Agreement (protection of the rain forests as global CO₂ memories), since its behavior is suitable to release the global climatic collapse and extinguish the world population.

We can therefore state that although there are no sanctions against non-compliance with the PA, there are sanctions outside the PA, namely in the International Criminal Code (Rome Statute).

Elias Pfeffer and the international FFF group "FFF-ICC Climate Action", which he founded, sent a letter to UN Secretary General António Guterres on April 27, 2020, asking him to organize an Emergency Special Session of the UN General Assembly in order to save the Amazon rainforest and to avert the three climatic catastrophe tipping points.

Despite a friendly reaction from Guterres and the nomination of Elias for "The Secretary-General's Youth Advisory Group on Climate Change" as well as further letters of petition, he did not initiate the UN Emergency Special Session, which is ultimately vital for the survival of all mankind.

However, the activation of the International Criminal Court to intervene against Bolsonaro as well as other heads of government, corporate leaders and investors for global genocide and crimes against

humanity through failure to comply with the PA or for massive violation of the PA is still urgently needed, possibly to save humanity at the last minute.

I would therefore also like to ask Extinction Rebellion to work for the activation of the International Criminal Court to enforce the Paris Agreement.

And there is a second option under international law to elegantly overcome the criminal inaction of heads of government, CEOs and investors:

II. Instrument under international treaty law: the official recognition of the PA as the "new ius cogens", i.e. "supreme international law"

According to Articles 53 and 64 of the Vienna Convention on the Law of Treaties, this has the highly effective legal consequence that international treaties and laws etc. that conflict with the Paris Agreement are **automatically null and void** and must therefore be renegotiated by the governments in a new way that is compatible with climate protection.

Article 53 Treaties conflicting with a peremptory norm of general international law ("jus cogens")

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a **norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted** and which can be modified only by a subsequent norm of general international law having the same character.

Article 64 Emergence of a new peremptory norm of general international law ("jus cogens")

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

So far, first of all the UN Charter and international criminal law have been recognized as "ius cogens".

Since the Paris Agreement is intended to save all mankind from an otherwise certain doom, has been ratified by all UN member states in record time, and since its immediate fulfillment is demanded in practically all public speeches and appeals, it should without any doubt be considered a "new ius cogens" and possibly even be the most important and highest "ius cogens" of all times.

But the real sensation is the legal consequence of the automatic nullity of conflicting international treaties, national laws, etc.

For example, in Art. XX GATT (General Agreement on Tariffs and Trade), which is practically the basis of the prevailing world economic system as well as all free trade agreements, encodes a primacy of trade and economic interests over public welfare interests and also over climate protection interests.

However, since the Paris Agreement is a "new ius cogens", Art. XX GATT, which has codified the primacy of trade and economic interests, since December 12, 2015 is null and void. And this automatically, without the need for a decision by the governments of the WTO member states.

As a result, the absolute priority of climate protection decisions over all economic and trade interests now rules and dominates the world trade.

All international treaties, all trade agreements and all national laws must be immediately and fundamentally realigned and renegotiated on the premise of the absolute priority of climate protection measures, in particular the fastest possible decarbonization of the global and national economy.

The "climate-focused transformation of the global economy" agreed upon and called for in the Paris Agreement can thus be achieved elegantly and extraordinarily quickly simply by recognizing the Paris Agreement as a "new ius cogens".

Above all, we no longer need to wait for governments to finally take action and implement the Paris Agreement step by step. Because now they suddenly have to become extremely active because their entire previous neoliberal world economic order is breaking away from them and they are forced to replace it completely with a world economic order focused on climate protection.

The world economic revolution, which is essential for the survival of all mankind, is thus taking place elegantly and quasi automatically through the Paris Agreement as a "new ius cogens".

The recognition of the Paris Agreement as a "new ius cogens" should therefore be pronounced immediately by the UN General Assembly.

Unfortunately, however, the opposite is happening there and this is probably the biggest scandal in world history.

Since 2014 the "International Law Commission" has been undertaking a re-coding of the "ius cogens" and has published a list of recognized "ius cogens". However, neither the UN Charter nor the Paris Agreement are to be found here, but almost exclusively norms of international criminal law.

The protocols show that the protection of the atmosphere and nature was rejected as "ius cogens" with hair-raising arguments and that the Paris Agreement was not even considered (<https://legal.un.org/docs/?symbol=A/CN.4/727> , p. 61 ff)

However, if the „ius cogens“ had been "re-coded", especially in view of the global climate emergency, it would have been the most important task of the ILC to recognize the Paris Agreement as a "new ius cogens" and to bring about a decision by the UN General Assembly.

This tour de force must therefore now be performed by global civil society.

I therefore ask all members of Extinction Rebellion worldwide to discuss this outrageous scandal with international law experts around the world.

And I ask all members of Extinction Rebellion worldwide to loudly demand and enforce the immediate official recognition of the Paris Agreement as a "new ius cogens" according to articles 53, 64 of the Vienna Convention on the Law of Treaties by the UN General Assembly.

The internal negotiations of the 6th Committee of the UN General Assembly on the recoding of the "ius cogens" will start on 26 October 2020. <https://www.un.org/en/ga/sixth/75/ilc.shtml>

In fact, however, this recognition of the Paris Agreement as a "new ius cogens", which is crucial for the survival of all humanity, should be discussed by all the people of the planet and decided upon publicly by the entire plenary of the UN General Assembly.

Many thanks!

Attorney Gisela Toussaint, Geigersbergstr. 31, 76227 Karlsruhe, Germany

www.vrany.de