

## Exam

### International Environmental Law JUS5520

Autumn 2022

#### Question:

Forestania is a sovereign state with significant forest cover. 25 percent of the land territory is forested land, including 12 percent of primary forests with high value of biological diversity. Several hundred animal and plant species and a number of distinct ecosystems are found nowhere else in the world. During the dry season (December to April), forest fires are common. In fact, some of the plant and forest species that are endemic, i.e. not introduced, to the region depend on fires to germinate.

During the dry season in 2021, however, forest fires have been more abundant than ever before. Compared to the 2020 season, they had doubled. Since the National Forest Agency of Forestania started the registration of forest fires in 1965, the number of fires and the spatial burning area had never been larger. Also, the fires had expanded to primary forest regions, as well as to peat land.

The Government of Forestania made a statement in August 2021, explaining that the fires are primarily located in areas which are already deforested. Wood and biomass are harvested and left to dry, and eventually burned during the dry season, in order to provide fertile, arable land for the production of soy and palm oil.

The Government also states that most of the deforestation is done in violation of national regulations and laws which aim at conserving forests. However, the Government states that due to capacity and financial constraints, it is not capable to enforce existing laws and to stop illegal deforestation activities. Funds which previously were allocated to the police force in rural forest areas to enforce the forest code, have been allocated to other purposes. At the same time, a national policy is being promoted that invites foreign investors to consider investing in Forestania's soy, cattle and palm oil industry. Also, while not officially supporting extended illegal forest clearing activities, Government officials have expressed little criticism, and in some cases even admiration, regarding those illegal deforestation activities.

Internationally, the forest fires in Forestania have been met with significant concern. A, a neighboring country, is affected by transboundary air pollution caused by the smoke caused by the forest fires. Due to smoke particles, the air quality in some of the most densely populated cities in A has dropped far below the standards suggested by the World Health Organization. A has implemented an ad hoc "health policy" and handed out free breathing masks to all children under the age of 10 and all elderly persons above the age of 70; roughly to 5 million people. The purchase price for a mask is 3 USD.

Another country, C, not neighboring to Forestania, and not even in the same geographical region, expressed concern about the impact of the fires on biological diversity, especially in primary forests. Moreover, C is deeply worried that the burning of wood and biomass, as well as of the peat in the

ground, releases significant amounts of greenhouse gases, which contributes to global climate change. Also, C is concerned that logging of forests reduced the capacity to take up and store carbon dioxide, which is a greenhouse gas.

An independent research institution assessed that the overall volume of greenhouse gases emitted from the 2021 forest fires in Forestania amounts to about 250 million tonnes. In comparison, Norway's greenhouse gas emissions in 2021 were 52 million tonnes.

Forestania is a party to the United National Convention on Biological Diversity, as well as a Party to the United Nations Framework Convention on Climate Change (not listed in any of the Annexes to that Convention) and the Paris Agreement. In 2016, Forestania submitted its First Nationally Determined Contribution under the Paris Agreement (for the time period 2020-2025), where it included the target to reduce its economy-wide greenhouse gas emissions by 25 percent in 2025, and to adopt effective measures to address and reduce emissions from the forest sector.

Countries A and C claim that Forestania has violated international law (both customary and treaty law). A intends to claim compensation for the effects on the life and health of its people, as well as of the costs of implementing the ad hoc "health policy". C considers adequate responses to such violation, including implementing trade measures prohibiting the import of products from Forestania.

You are employed by the Ministry of Foreign Affairs of Forestania, and work in the Ministry's legal department. You are asked to provide a legal analysis of whether Forestania has violated international law.