

Summary of WWF's Statement for the ICJ's Advisory Opinion Proceedings on Climate Change

1. On 29 March 2023, the United Nations General Assembly ("UNGA") adopted Resolution 77/276, requesting that the International Court of Justice ("ICJ" or the "Court") render an advisory opinion on the following questions:

"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

- WWF has submitted a statement in the proceedings on these questions, pursuant to the ICJ's Practice Direction XII, which accepts that an international non-governmental organization ("NGO") may submit a written statement in an advisory opinion proceeding on its own initiative.
- WWF's statement focuses on the important of obligations relating to biodiversity falling within the scope of question (a) (without prejudice to the fact that the scope of the obligations caught by the question is much broader).
- It is important for the Court to engage with such obligations given:
 - The undeniable threat to biodiversity caused by climate change; and

- The threat to human life (present and future generations) that results if biodiversity is depleted.
- In particular, a loss in biodiversity impacts humanity's ability to mitigate the effects of climate change itself, since certain ecosystems and species: (1) play a role in the removal and sequestration of CO₂ from the atmosphere (e.g. forests, wetlands, grasslands, marine ecosystems); and (2) can reduce the risks associated with natural disasters exacerbated by climate change.
- In this context, WWF's position on question (a) is as follows:
 - The reference in question (a) to "*the climate system and other parts of the environment*" encompasses biodiversity. Therefore, obligations which "*ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations*" include:
 - obligations ensuring the protection of biodiversity (generally) from GHGs (and their effects, including climate change); and
 - obligations which ensure the protection of those particular ecosystems and species which help to mitigate the effects of GHGs on the broader "*climate system and other parts of the environment*".
 - Such obligations include:
 - obligations under customary international law to: (i) prevent transboundary harm to biodiversity, and (ii) cooperate and exercise vigilance in preventing such harm, including by conducting Environmental Impact Assessments ("EIAs") and (as increasingly recognised) Strategic Environmental Assessments ("SEAs"), the growing use of which by States and international agencies WWF notes with approval;
 - obligations under treaties between specific States, such as:
 - the Convention on Biological Diversity, including those directly relevant to the mitigation of the effect of climate change on biodiversity, such as obligations of detailed monitoring by the parties of the components of biological diversity and the duty to cooperate in respect of the protection of biodiversity;
 - the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction ("BBNJ"), which is yet to enter into force, but includes a requirement for undertaking cumulative environmental assessments ("CEAs"); and

- the United Nations Framework Convention on Climate Change, the Paris Agreement, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the Protocol on Environmental Protection to the Antarctic Treaty, United Nations Convention on the Law of the Sea, Convention on the Conservation of European Wildlife and Natural Habitats, the Convention on Migratory Species and the Agreement on the Conservation of Polar Bears, International Convention for the Regulation of Whaling; and
 - international human rights law obligations, including the right a healthy environment, the right to health and life, the right to an adequate standard of living including food and water, and the right to non-discrimination (to the extent that the climate crisis has different impacts on different groups, yet rights must be enjoyed without discrimination).
 - As regards the general obligation to prevent transboundary harm to biodiversity, this is an obligation of due diligence. However, the standard of due diligence is a stringent one: States must take all measures necessary to mitigate the impact of climate change on biodiversity. This includes at the very least taking measures to limit the global temperature increase to 1.5°C. However, it also encompasses the obligation to take other steps, informed by current scientific knowledge, such as preventing deforestation, restoring forests and land and conserving biologically sensitive environments. Relatedly, States have the duty to cooperate including by sharing information, when taking such measures and steps.
- WWF's position on question (b) is as follows:
 - The significant damage and loss already caused to biodiversity by anthropogenic GHGs is testimony to a persistent failure by States to meet their obligations to prevent environmental damage and protect biodiversity.
 - The law of State Responsibility requires, at a minimum, wrongdoing States immediately to cease the commission of internationally wrongful acts, immediately to implement measures to comply with their obligations to protect, preserve and restore biodiversity, and to provide full reparation for the damage caused.
 - Restitution will not be possible in many cases of irreversible loss to biodiversity. Nevertheless, States must cease the commission of the violation and take all measures available to mitigate the harm caused, prevent future harm, and compensate injured States for the significant harm caused.

- WWF strongly supports the adoption of the “*polluter pays*” principle in the compensation of States, and their populations, vulnerable to the adverse effects of climate change, and that have suffered significant, often irreversible damage, resulting from pollution by GHG emissions.
- Some States are undertaking compensatory and remediation efforts on a voluntary basis, or supporting initiatives driven by WWF and other environmental NGOs by the contribution of funds. However, these initiatives are not occurring on a scale sufficient to mitigate further significant damage caused by GHG emissions. What is required is immediate concerted action by States, in cooperation with one another, in the implementation of measures to restore and protect biodiversity, and to ensure injured States are properly and fairly compensated.
- Strategic international cooperation is fundamental to preventing significant and irreversible damage to biodiversity. This is not voluntary. Multiple treaties impose obligations on States to cooperate specifically in the preservation and protection of biodiversity. WWF encourages all States to take immediate measures to ensure their compliance with their international obligations to preserve, protect, and restore biodiversity, and the compliance of other States.
- Where States are failing to comply with those obligations, such measures may include, but are not limited to, the invocation of the responsibility of wrongdoing States by injured States individually or in coordination as a group of States, including the most vulnerable States specially affected by the relevant breach, on their own accord and/ or on behalf of their nationals for significant damage caused by the breach.
- The invocation of the responsibility of wrongdoing States will ensure those wrongdoing States immediately implement measures to comply with their obligations and to provide reparation. Without the concerted, collective effort of States, there is little prospect for the prevention of irreversible harm to biodiversity, and in turn to the climate system.
- Human rights law can be a powerful part of the legal toolkit that seeks to arrest the biodiversity emergency. While enforcement of international environmental law poses significant difficulties for individuals, national and regional courts have found on multiple occasions that degradation of the environment has resulted in a breach of human rights law, including violations of the right to a healthy environment.
- International environmental law thereby has the power to shape the scope of States’ human rights obligations, when courts such as the ECtHR and IACtHR interpret human rights treaties as living instruments, providing some routes to a degree of indirect enforcement. In some of these human rights cases, reparations have gone beyond payment of compensation and required significant restoration of the damage caused.

- While WWF's statement will not be considered part of the case file of the Court, it may "*be referred to by States and intergovernmental organizations presenting written and oral statements*" in the advisory opinion proceedings and will be placed "*in a designated location in the Peace Palace*" which shall be notified to States and intergovernmental organizations making written and oral statements in the proceedings.
- Given WWF's expertise in matters relevant to the Court's advisory opinion, WWF urges such intergovernmental organizations and States, as well as the Court, to pay attention to it.

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