

INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS



THE CASE CONCERNING

QUESTIONS RELATING TO RESPONSES TO HIGHLY PATHOGENIC AVIAN  
INFLUENZA AND TRANSBOUNDARY WETLANDS

**THE FEDERAL STATES OF AVES**

*APPLICANT*

Vs.

**THE REPUBLIC OF RENAC**

*RESPONDENT*

MEMORIAL FOR THE RESPONDENT

THE 2017-2018 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT  
COMPETITION

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## **QUESTIONS PRESENTED**

- I. WHETHER THE REPUBLIC OF RENAC HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO THE 2014 AND 2015 OUTBREAKS OF HIGHLY PATHOGENIC INFLUENZA.**
- II. WHETHER THE REPUBLIC OF RENAC HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO DELISTING THE ADEGURI MARSH WETLAND AS A RAMSAR SITE AND AS A TRANSBOUNDARY RAMSAR SITE AND IF THE PROPOSED COMPENSATION IS ADEQUATE.**
- III. WHETHER THE FEDERAL STATES OF AVES HAS VIOLATED INTERNATIONAL ENVIRONMENTAL LAW WITH RESPECT TO THE PRINCIPLE OF INTERNATIONAL COOPERATION.**

## **STATEMENT OF JURISDICTION**

The Governments of the Federal States of Aves and the Republic of Renac, being parties to the Statute of the International Court of Justice have recognized the jurisdiction of the International Court of Justice.

## **STATEMENT OF FACTS**

The Federal States of Aves and the Republic of Renac are neighboring sovereign states. Aves is considered a developed state, and Renac is considered a developing state. Both countries' economies are based primarily on agriculture, particularly poultry production. Ecotourism also is popular in both states. Aves has a per capita GDP of US \$17,500. Renac has a per capita GDP of US \$1,500. Aves's GDP is 11,6 times the GDP of Renac.

Aves and Renac share a 20,000-hectare transboundary wetland, the Adeguri Marsh, which is a shallow freshwater wetland. In 2000, Aves and Renac each designated their respective portion of the Adeguri Marsh as a Wetland of International Importance (Ramsar Site) under the Ramsar Convention, and in 2008, Aves and Renac jointly listed the Adeguri Marsh as a Transboundary Ramsar Site. Several large, privately owned poultry facilities and hundreds of small-scale, privately owned subsistence poultry farms are located near the Adeguri Marsh in both Aves and Renac.

In late December 2013, Aves reported an outbreak of highly pathogenic avian influenza in a commercial poultry facility. Three weeks later in early January 2014, Renac experienced a severe outbreak of highly pathogenic avian influenza originated from the poultry facility in Aves and transferred to Renac through cross-infection between domestic poultry and wild water birds near the Adeguri Marsh. Several large commercial poultry facilities and at least ten small poultry farms in Renac were infected, and approximately 500 wild water birds were found dead near the Adeguri Marsh. Of the dead wild birds, 20, were subsequently tested and were found to be infected. Shortly after the outbreak, Renac had to act in order to protect the health, safety, and well-being of its citizens. The best way to combat this outbreak was to cull domestic chickens and the potentially infected wild water birds near the Adeguri Marsh in Renac , act duly notified

to the state of Aves. Renac's acting was urgent to prevent transboundary harm by reducing the spread of this deadly virus.

In early February 2015, a small outbreak of highly pathogenic avian influenza occurred in poultry in Aves but was quickly contained. Shortly thereafter, another severe outbreak of highly pathogenic avian influenza occurred in Renac. The virus spread to Renac following drainage from Aves's poultry facilities contaminating the wetland and subsequent cross-infection between water birds in and around the Adeguri Marsh and Renac poultry facilities and farms. Concerned that another severe outbreak had occurred only a little over a year after the previous outbreak, Renac decided to intensify its response. Renac notified Aves that Renac planned to cull the infected domestic chickens, cull potentially infected wild water birds, and dispense disinfectants, such as chlorine, into the Adeguri Marsh to fight the virus and help prevent its spread.

Renac had to delist the wetland as a Ramsar Site for urgent national interest in terms of the Ramsar convention and notified this action to the Ramsar Convention Secretariat, the Ramsar Contracting Parties, and the Government of Aves. This was done according to the procedure established in the Convention and proposed the respective compensation by enhancing and preserving a 17,000-acre coastal salt marsh, in accordance with Ramsar Article 2.5

## **SUMMARY OF THE ARGUMENT**

I. The state of Renac did not violate international law with respect of its response to the 2014, and 2015 outbreaks of highly pathogenic avian influenza, because, first Renac's actions were made within the principle of sustainable development and under an exculpatory state of necessity.

This Court should also acknowledge that Renac did not violate the conventions it is a party of, as Ramsar, CBD, CMS, and AEWA. Rather acting to protect and preserve the wellness of his population and the environment, accordingly with the principle of common but differentiated responsibility that is established in the Rio declaration, and the principle of Due diligence.

II. The Court should also consider that the Federal State of Aves is a developed country that breached international law, because it is clear that there was an obligation of international cooperation in the sustainment of the Adeguri Marsh as it is a transboundary wetland established under the Ramsar convention.

## ARGUMENTS

### I. THE STATE OF RENAC DID NOT VIOLATE INTERNATIONAL LAW

#### A. Renac's actions are within the principle of sustainable development.

The protection of the environment is framed within the principle of sustainable development, which implies a holistic view of all the factors that impact human life regarding the protection of the ecosystem services which are the basis of economy and society. The efficient use of the natural resources becomes important in terms of its relationship with the human necessities.

So, when it comes to the actions that the Republic of Renac took to contain the virus, the main good that it was trying to protect was human life, which was in big danger and unfortunately took more than one life. The Republic of Renac acted in accordance with the principle of sustainable development, because the main goal of this core principle is to provide the entire adequate environment for the development of human life.

Noting that the measures taken on the second of February of 2014 were not effective, and that Aves did not effectively cooperate, the Republic of Renac had to take immediate responses to the crisis of February 2015 by eradicating the virus in the most efficient way. Indeed, the seventeen goals of the sustainable development established by the United Nations, have good health and wellbeing as its third goal.

On the other hand, another component of the principle of sustainable development is to prevent that future generations won't have enough resources to survive, as stated in the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) "Sustainability is the foundation for today's leading global framework for international cooperation". However, in terms of cooperation, Renac saw the need to act by itself because as Jeffrey Sachs says, "health

is an area in which there is a relatively good fulfillment of commitments in general, but the international community is falling far short of its commitment to achieve the MDGs. Poor countries are falling far short of the targets, especially in poorest countries. Simply put, aid levels remain disastrously low compared to where they need to be and compared to the amount the rich countries promised to help.”

By stopping the avian influenza from spreading, the Republic of Renac also guarantees and protects the life of the wild water birds.

In these terms, with the actions of the Republic of Renac, the principle of sustainable development makes sense in terms of protecting the future generations from the possibility that the ecosystem will no longer exist because of the death of the birds due to the infection with the virus.

**B. Renac acted under an exculpatory state of necessity.**

The state of necessity is a principle of customary law codified in the International Law Commission’s Draft Article on the International Responsibility of States adopted by General Assembly Resolution on 12 December 2001. It was also examined in detail by the International Court of Justice in the *Gabcikovo-Nagymaros* case<sup>1</sup>. The state of necessity may be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation when it is the only way for the State to safeguard an essential interest against a grave and imminent peril; and it does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

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<sup>1</sup> *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1. C. J. Reports 1997, p. 7

With respect to Renac's responses to the 2014 and 2015 outbreaks of highly pathogenic avian influenza the State acted upon an essential interest, which was the public safety of its citizens and the conservation of the water birds in the Adeguri Marsh as they were exposed to this deadly virus. As it is well-known this virus is rapidly spread among birds, a report of the World Health Organization found that “Birds infected with avian influenza virus shed large quantities of virus in their faeces as well as in their saliva and nasal secretions... It is likely that infected droppings or other secretions from both symptomatic and asymptomatic migratory waterfowl will enter water environments where the birds gather”.<sup>2</sup> Over the last years the virus has also been found in humans as a consequence of inhalation of infectious droplets or airborne droplet nuclei (aerosols), and direct, or possibly indirect contact with birds<sup>3</sup>. This represents a clear imminent peril to the population of Renac since the Adeguri Marsh is a public space very often used by the population in both states especially because the people use the wetland as a freshwater source, meaning they could have easily drunk the contaminated water and get the virus. The WHO has mentioned some possible scenarios for the transmission of the virus that include consumption of virus-contaminated drinking water and bathing/recreational contact with virus-contaminated water bodies,<sup>4</sup> activities that were done commonly in the wetland.

Given the constantly changing nature of influenza viruses, the timing and severity of the next pandemic cannot be predicted. The state of Renac did not have the financial means to control the effects of the virus. The urgency to take immediate actions lead to the only viable solution for Renac of culling the birds that carried the virus, the WHO states that even if vaccines and

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<sup>2</sup> World Health Organization, *Potential transmission of avian influenza ( H5N1 ) through water , Sanitation and Hygiene and ways to reduce the risks to human health*, WATER, SANIT. HEAL. PUBLIC HEAL. ENVIRON. GENEVA 1–20 (2007), [http://www.who.int/water\\_sanitation\\_health/emerging/h5n1background.pdf](http://www.who.int/water_sanitation_health/emerging/h5n1background.pdf)

<sup>3</sup> (World Health Organization, 2007)

<sup>4</sup> (World Health Organization, 2007)

antiviral drugs are the two most important medical interventions for reducing morbidity and mortality during a pandemic, they will not be available in adequate supplies for the population at risk.<sup>5</sup> It is worthy of note that Renac didn't have the vaccines at the time of the outbreak and the international community did not have an international stockpile of antiviral drugs neither. At last this principle imposes a balance requirement, which means the interest sacrificed must be less important than the interest it is sought to have. The propagation of the virus is severe as the avian influenza is a zoonotic agent, standing as a threat to human health, even more as the risk of human infection has grown in the last years<sup>6</sup>. It is clear that the health of the citizens of both Renac and Aves stands as a priority over any other interest to preserve the environment, as its main purpose is to benefit human kind and future generations.

**C. Renac did not violate international law with the measures taken during the 2014 and 2015 outbreaks.**

**1. Renac did not violate Ramsar**

One of the main obligations under the Ramsar convention is the wise use of the wetlands stated in Art 3.1, which establishes that states “shall formulate and implement their planning so as to promote as far as possible the wise use of wetlands in their territory”

This article and most of the others in the convention are stated in very vague terms, which might not have created a specific legal obligation. The convention did not define the concept of ‘wise use’ and the duty established is only to ‘promote’ it, and then only ‘as far as possible’.

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<sup>5</sup> World Health Organization, *Responding to the avian influenza pandemic threat Recommended strategic actions*, 53 680–690 (2005), [http://www.who.int/csr/resources/publications/influenza/WHO\\_CDS\\_CSR\\_GIP\\_05\\_8-EN.pdf](http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_05_8-EN.pdf)

<sup>6</sup> (World Health Organization, 2016a)

Nevertheless the 3rd Ramsar Conference of the Contracting Parties<sup>7</sup> defined the wise use of wetlands as: “their sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem.” As part of its definition of the wise use of wetlands, COP3 also defined “sustainable utilization” as: “human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations”<sup>8</sup>. It is clear that an ecosystem contaminated with a virus that affects most birds, humans and other mammals might not benefit the human kind nor maintain its potential for future generations. The spread of the virus is caused by a spill-over or spill-back effect meaning the transmission of infectious agents from reservoir animal populations to sympatric wildlife, termed spill-over, and via reverse spill-over (“spill-back”), from wildlife to sympatric populations of susceptible domesticated animals<sup>9</sup>. This represents a risk to the environment considering some wild birds are silent reservoir of the virus and keep on transmitting it to humans or birds making it very difficult to eradicate.

The republic of Renac took the actions that were necessary in order to maintain the life of the ecosystem, which might have resulted harmful for some species, but the actions sought a greater benefit to the whole community of the Adeguri Marsh. It is important to note that the actions had a positive effect on the wetland and there hasn't been another outbreak since to 2015. The ecosystem will restore due to ecological resilience<sup>10</sup> and will continue offering its benefits to both animals and the people in the Adeguri Marsh.

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<sup>7</sup> (Conference of the Contracting Parties, 1987)

<sup>8</sup> (Conference of the Contracting Parties, 1987)

<sup>9</sup> P Daszak, *Emerging Infectious Diseases of Wildlife-- Threats to Biodiversity and Human Health*, 287 SCIENCE (80-. ). 443–449 (2000), <http://www.ncbi.nlm.nih.gov/pubmed/10642539>

<sup>10</sup> the ability of an ecosystem to maintain its normal patterns of nutrient cycling and biomass production after being subjected to damage caused by an ecological disturbance.(Online Encyclopædia Britannica, 2015)

## 2. Renac did not violate CBD.

Article 5 of the CBD<sup>11</sup>, states that “each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.”<sup>12</sup> Because, as facts can show (Fact 16, Record Page 7) , the Federal States of Aves did not notify the Republic of Renac of any of the outbreaks that occurred in its territory before the virus spread and arrived in our state. Such lack of communication caused harmful effects that could have been prevented, if Aves had acted according to the principle of cooperation.

The Federal State of Aves knew about the hard situation that the Republic of Renac was going through due to the outbreak caused by the cross- infection between domestic poultry and wild birds in January 2014, and in spite of that, it limited to point out that the actions taken by Renac were wrong, instead of cooperating and helping its developing state neighbor to contain the highly pathogenic Avian Influenza.

It is worth to take into account that the Republic of Renac is a developing state that did not have the financial resources to implement all the actions needed to stop the disaster coming and as it is known the poor states are particularly vulnerable to climate change, and suffer more from the economic impacts, and are not so easily adaptable to new conditions.<sup>13</sup>

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<sup>11</sup> (“Convention on biological diversity united nations 1992,” 1992)

<sup>12</sup> (“Convention on biological diversity united nations 1992,” 1992)

<sup>13</sup> C McGuigan, Rebecca Reynolds & Daniel Wiedmer, *Poverty and climate change: Assessing impacts in developing countries and the initiatives of the international community*, LONDON SCH. ECON. ... (2002), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3449.pdf>

Additionally, the Republic of Renac did not violated article 8 of the CBD by culling the wild water birds. Instead, this was the only action the Republic of Renac could have taken given the situation and the capacities of a developing country as Renac was culling the crowned cranes and the poultry, that constitute the major natural LPAI virus reservoir<sup>14</sup>, that will with almost all the population of Renac and other wild birds destroying the ecosystem.<sup>15</sup>

Therefore, the culling was the only action to be possible taken because, even though “experts have suggested that aggressive measures, centered on the prophylactic use of antiviral

drugs, might contain a pandemic at its source or at least slow its spread”<sup>16</sup>, there were no vaccine available for the highly pathogenic avian influenza virus (H5NX) involved in the outbreaks at the Adeguri Marsh (Q25, clarification for the record).

Furthermore, as the article 5 of CBD establishes, each contracting party should implement all the actions and measures necessary to protect biodiversity, and the influenza was the main danger for the water birds, because, as facts show, of 20 tested dead water birds, a hundred percent result to be infected. If we didn’t take the actions needed to stop it, many animals will be dead and still dying right now.

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<sup>14</sup> Björn Olsen et al., *Global Patterns of Influenza A Virus in Wild Birds*, 312 SCIENCE (80-. ). 384–388 (2006), <http://www.ncbi.nlm.nih.gov/pubmed/16627734>

<sup>15</sup> In a report made by Science Magazine they show how the avian influenza (HPAI H5N1) originated in poultry in Southeast Asia mortality in >60 wild bird species , and In addition, during the devastating outbreaks in poultry, the H5N1 virus was transmitted to 175 humans, leading to 95 deaths (as of 6 March 2006), and has also been isolated from pigs, cats, tigers, and leopards. <http://science.sciencemag.org/content/312/5772/384.full>

<sup>16</sup> (World Health Organization, 2005)

### 3. Renac did not violate CMS.

The republic of Renac did not violate the convention on the conservation of migratory species of wild animals since the actions of Renac are justified exceptions for the taking of wild animals, one of these exceptions is established in article III (5)<sup>17</sup>, which proclaims that it is possible for a state to take wild animals (in this case wild- birds) to enhance the survival of an affected specie.

Therefore, in this case, as it is well known, Renac had an outbreak of avian influenza, where 500 wild birds were found dead, including 150 blue-crowned cranes. The state of Renac is absolutely certain that these massive deaths were the result of the avian influenza that was originated in the State of Aves, and sadly was introduced to Renac through the Aguedri Marsh. Such conclusion can be made due to the results of the test taken by Renac, which indicates that 100% of the sample was positive for avian influenza.

Attained to the arguments below, the CMS on article III (5)<sup>18</sup> provides that: “such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.” Renac also followed this rule, thus it only culled wild birds in a period of time, in a state of necessity (an outbreak of avian influenza) that forced the state to take these actions in order to prevent the species from becoming extinct from the propagation of the virus.

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<sup>17</sup> T H E Contracting Parties, *Convention on the Conservation of Migratory Species of Wild Animals*, J. INT. WILDL. LAW POLICY 1–6 (1979), [http://www.cms.int/sites/default/files/instrument/CMS-text.en\\_.PDF](http://www.cms.int/sites/default/files/instrument/CMS-text.en_.PDF)

<sup>18</sup> (Parties, 1979)

#### 4. Renac did not violate AEWA

AEWA can be considered as a multilateral environmental agreement (MEA), which fits into the category of international treaties. According to Fitzmaurice, to consider international agreements as the equivalent of a statute on the domestic ground, is an overstatement. “Law making treaties do not really create law in the proper sense of the term, though they may lead to its emergence if the provisions are caught up into customary international law.”<sup>19</sup> However, the Republic of Renac only intends to respect the agreements to which it has consented to, as far as possible. Therefore, Renac took into consideration the provisions of AEWA and in no case, were violated.

In respect of article II of AEWA<sup>20</sup>, Renac is trying to prevent the spread of the virus and help maintain the populations of blue-crowned cranes and other water birds. As studies of the outbreak of H5N1 that started in Eastern Asia in 1996 show, “Migratory birds are known to carry the infection which supports the hypothesis they may have played a role in the spread of H5N1”<sup>21</sup>

If there is such a violation in terms of coordination between states, then it should be attributed against Aves, and not against Renac. In terms of article III of the AEWA, the parties shall: “cooperate in developing appropriate emergency procedures to provide increased protection to these species in such situations and in the preparation of guidelines to assist

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<sup>19</sup> (Dixon, McCorquodale, & Williams, 2011)

<sup>20</sup> United Nations Environment Programme, *Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA): Agreement text and annexes.*, in THE 6TH SESSION OF THE MEETING OF THE PARTIES TO AEWA 9 - 14 NOVEMBER 2015, BONN, GERMANY. (2015), [http://www.unep-aewa.org/sites/default/files/basic\\_page\\_documents/aewa\\_agreement\\_text\\_2016\\_2018\\_FINAL\\_correction\\_made\\_on\\_p\\_54\\_wcover.pdf](http://www.unep-aewa.org/sites/default/files/basic_page_documents/aewa_agreement_text_2016_2018_FINAL_correction_made_on_p_54_wcover.pdf).

<sup>21</sup> Pranav S. Pandit et al., *Modeling highly pathogenic avian influenza transmission in wild birds and poultry in West Bengal, India*, 3 SCI. REP. 2175 (2013), <http://www.nature.com/articles/srep02175>.

individual Parties in tackling these situations”<sup>22</sup> if Aves were to be cooperative, it would have offered alternatives or resources to achieve the common goal, the conservation of the species. Although Aves suggested Renac to improve biosecurity, Renac communicated that it does not have the means to do so. Also, Aves had the financial resources to improve biosecurity at the agricultural facilities in Aves but failed to accomplish such required prevention. This leads to the violation towards the duty to “coordinate their efforts to ensure that a network of suitable habitats is maintained or, where appropriate, re-established throughout the entire range of each migratory waterbird species concerned, in particular where wetlands extend over the area of more than one Party to this Agreement”<sup>23</sup>. The outbreaks were all caused within the jurisdiction of Aves, and instead of containing the virus, it spread and generated the severe situation that lead Renac to take the necessary measures in the pursuit of the greater good; which was to not only take care of the public health and safety of the Renac people, but also to prevent the spread of the virus within the blue crowned cranes species itself. This is in absolute accordance with the Action Plan of the AEWA, found in Annex 3<sup>24</sup>. Article 2.1.1 prohibits the taking of birds of those populations occurring in their territory; but article 2.1.3 includes an exemption to the culling, and Renac’s situation is exempted according to two of the provisions:

(b) in the interests of air safety, public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance to the environment;

(e) for the purpose of enhancing the propagation or survival of the populations concerned.

Such action plan is also framed within the sustainable development principle.

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<sup>22</sup> (United Nations Environment Programme, 2015)

<sup>23</sup> (United Nations Environment Programme, 2015)

<sup>24</sup> (United Nations Environment Programme, 2015)

Although resolutions 3,18<sup>25</sup> and 4,15<sup>26</sup> recommend not to cull wild birds, these are subsidiary sources of international law. This means that they are not binding to states. If the international agreement AEWA includes such exemption, it is because it allows it to occur under severe circumstances like the ones experimented in Renac.

***5. Renac acted according to Rio declaration (differentiated responsibilities.)***

For developing countries there is, according to international principles, a differentiated responsibility from those countries who are developed. There for, Renac as a developing State does not have the same financial, technical, and technological means as Aves does, and even though Aves recommended not to cull water birds, Renac could not assume another possible action to contain the virus within the restricted timing.

The principle 6 of the Rio Declaration, for instance, argues that: “The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority”<sup>27</sup>, similarly, principle 7, of the same declaration, states that “In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

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<sup>25</sup> (Meeting of the Parties, 2005)

<sup>26</sup> (Meeting of the Parties, 2008)

<sup>27</sup> The United Nations Conference on Environment and Development, *THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT*, (1992), [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF).

It is important to highlight that the first Millennium Development Goal aims to halve the number of people in the world living in extreme poverty<sup>28</sup>, and this vulnerability is affected by a country's natural hazards, mostly in developing countries<sup>29</sup>, that do not have the means to control them. For this reason, developing countries, as Renac, have an urgent need to act, controlling every natural hazard that could endanger, and affect the nourishment of its citizens due to the killing of poultry that people live of.

For Renac, the most effective technique was to cull, since the development and initial commercialization of significant technological innovations is heavily concentrated in the developed countries, because technological innovations require a stock of capital goods, operating know-how and the acquisition of machinery or product design<sup>30</sup>, that developing countries, as Renac, are simply not able to obtain.

As elucidated previously, in international law the principals of equity and differentiated responsibility are often used as a synonym for fairness or justice, because, even though formal equity demands rules of identical treatment to each state regardless of size and wealth, these equality treatments are often perceived as unjust.<sup>31</sup> Regarding these principles mentioned above, the Rio declaration on its principle 6 and 7 reflects that in order to ensure equal treatment, equitable norms may be adopted and applied to treat states unequally.<sup>32</sup>

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<sup>28</sup> Wim a Naude, Au Santos-Paulino & M McGillivray, *Vulnerability in developing countries*, 8 UNU-WIDER 3–5 (2009), <https://collections.unu.edu/eserv/UNU:2548/ebrary9789280811711.pdf>.

<sup>29</sup> (Naude et al., 2009)

<sup>30</sup> (Paulsen & Balch, 1984)

<sup>31</sup> Danel Bodansky, Jutta Brunnée & Helen Hey, *The Oxford Handbook of International Environmental Law*, 10–11 (2007), <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199552153.001.0001/oxfordhb-9780199552153>.

<sup>32</sup> (Bodansky et al., 2007)

## 6. SOFT LAW.

The resolutions, unlike treaties, are subsidiary sources of international law. This means that they are not binding to states. Although resolutions and recommendations of FAO and OIE recommend not to cull wild birds, the scientific data shows that the measure was effective, being the 2015 outbreak the last one experimented in Renac, and no further dispersion of infected birds occurred.

### **D. Renac did not cause transboundary harm by verting the disinfectants in the wetland.**

There is a failure to prove that there is enough transboundary damage to rise international liability, in terms of what is called the threshold criterion. “International law only tackles those cases where transboundary damage has reached a certain degree of severity.”<sup>33</sup> Therefore, transboundary harmful effects must reach a threshold in order to impose any international obligations on a State.

A disinfectant such as chlorine “has the advantage of being widely available, simple to measure and use, and it dissolves easily in water.”<sup>34</sup> Within the limited amount of time and the resources available to Renac, chlorine was a feasible option that also caused no significant harm to the ecosystem.

Aves monitored the ecology of the Adeguri Marsh in February 2015 but was unable to determine the effects of the disinfectants on the wetland, and as stated on the fact 25 located in record page 11, it was concluded that there is no significant degradation of the water quality of the wetland in

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<sup>33</sup> XUE HANQUIN, 16 TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW JOURNAL OF ENVIRONMENTAL LAW (2004), <http://s1.downloadmienphi.net/file/downloadfile4/206/1392177.pdf>.

<sup>34</sup> World Health Organization, WHO CLEANING AND DISINFECTING BOREHOLES WHO (2016), [http://www.who.int/water\\_sanitation\\_health/publications/tech\\_note1/en/index2.html](http://www.who.int/water_sanitation_health/publications/tech_note1/en/index2.html)

Aves. In addition, although the WHO warns that “water with high concentration of chlorine should not flow into streams or wetlands;”, if the water quality did not change significantly, it is safe to say that there was no high concentration of chlorine flowing in the Adeguri Marsh.

In this regard, there is no international responsibility for Renac.

#### **E. Renac delisted the wetland according to international law**

Article 2 of the Ramsar Convention provides the obligation to designate suitable wetlands within its territory for inclusion in the List of Wetlands of International Importance, according to a broad criterion to be applied in this selection process, namely:

‘Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included.’

As stated in article 2.5 a State has the right to delete or restrict the boundaries of wetlands already included by it in the List because of its ‘urgent national interests’. In keeping with Article 2.3 of the Convention, "the inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated," this implies the determination of "urgent national interests" lies solely with the Contracting Party. Nevertheless the concept of urgent national interest is developed in the Resolution VIII.20,<sup>35</sup> which establishes a list of factors to take into account when invoking the right. The situation Renac faced fits into the facts 3.2, 3.3, 3.4 and 3.11.<sup>36</sup> The reason to delist the Adeguri Marsh as

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<sup>36</sup> 3.2 whether maintaining the status quo threatens a national interest;  
3.3 whether the proposed change is consistent with national policies;  
3.4 whether the immediate action is required to avert a significant threat;  
3.11 the alternative that will best minimize harm to the site in question;

a Ramsar site was done according to national policies and due to the need to take internal actions in order to prevent a future outbreak. However, it doesn't imply damage to the environment since the State of Renac will continue acting towards the preservation of the wildlife in the wetland.

### **1. Renac acted according to the principle of Due diligence.**

Due diligence is a principle of customary international law that can be understood as a standard of conduct expected from the state that has a potential damage to the environment. Such conduct has the objective to prevent transboundary harm. It does not establish specific rules of conduct because it depends on the capacities of each state, and leaves room for States to determine which measures are necessary. It is an obligation of conduct, and not of result. The duties within due diligence are procedural ones, that can be commonly synthesized into three:

#### **a. The duty of assessment of harm**

The Ramsar Convention Secretariat has established in Recommendation 6.2 (1996) and Resolution VII.16 (1999) that "Parties should undertake impact assessment where appropriate."<sup>37</sup> In compliance with such resolutions, even though they aren't binding, Renac conducted in late 2015 an extensive environmental impact assessment (EIA) regarding the potential delisting of the Adeguri Marsh as a Ramsar Site. Such EIA involved the State of Aves, whom agreed that the process was sufficient in fact 28, located in record page 12.

#### **b. The duty of notification and the right to be notified**

On March the third of 2016, Renac notified the Ramsar Convention Secretariat, the Ramsar Contracting Parties, and the Government of Aves that Renac planned to delist the Adeguri Marsh

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<sup>37</sup> Ramsar Convention Secretariat, *Impact assessment: Guidelines on biodiversity-inclusive environmental impact assessment and strategic environmental assessment.*, 16 RAMSAR HANDBOOKS WISE USE WETL. 67 (2010), <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-16.pdf>

due to urgent national interests in accordance with Ramsar Article 2.5. In such notification, Renac also established the planned compensation.

### **c. The duty of consultation**

The duty of consultation has not been established in a precise manner by international law, but given the urgent circumstances of Renac's situation, it can be recognized that the consultation was sufficiently carried on with the diplomatic conversations between the two States. Treaties such as the UN International Watercourse Convention can also support this. Such treaty indicates that in an urgent situation, where important national interests such as public health and public safety require "the immediate implementation of a project, the acting State can proceed with the project while promptly declaring the urgency to the States concerned. " <sup>38</sup>

In addition, the principle of sovereignty over the natural resources as well as its right to development, enables Renac to act without the need of consent on behalf of Aves.

## **2. Adequate Compensation (principle of common but differentiated responsibility) Ramsar.**

Additionally, some treaties like the Ramsar convention, and the convention on Biological Diversity, incorporate notions of capacity, generally requiring each state party to take measure: "in accordance with its particular conditions and capabilities" or "as far as possible and as appropriate".<sup>39</sup>

Ramsar convention for example, on article 3, establishes that "the Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands

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<sup>38</sup> (Hanquin, 2004)

<sup>39</sup> (Bodansky et al., 2007)

included in the List, and as far as possible the wise use of wetlands in their territory”.<sup>40</sup> This norm allows some countries to take socio-economic considerations in the application of international commitments, encouraging the participation of developing countries in international environmental law <sup>41</sup> meaning that Renac was able, under the Ramsar convention, to compensate the delisting of the Adeguri Marsh taking into account its own capacities and situations.

Therefore, The Republic of Renac really did everything possible for a developing state to secure the financial resources and health of its people by delisting de Adeguri Marsh and also enhanced the coast salt Marsh as a protected area. Additionally, the Adeguri Marsh was only delisted so that Renac could have more flexibility containing and controlling the outbreak. The Republic has an intention to maintain the wellbeing of the wetland with internal national policies.

The main reason for the delisting was to preserve the wellness of its population, not for a mere economic reason like many other countries have argued in the delisting of water lands from the convention, like Belgium<sup>42</sup> and Australia<sup>43</sup> in 1997.

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<sup>40</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitat, RAMSAR 1–5 (1994), [https://www.ramsar.org/sites/default/files/documents/library/current\\_convention\\_text\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf).

<sup>41</sup> Duncan French, *Developing states and international environmental law: the importance of differentiated responsibilities*, 49 INT. COMP. LAW Q. 35–60 (2000), <http://ezproxy.eafit.edu.co:2111/stable/761577>

<sup>42</sup> “In 1987, Belgium announced at the third Conference of the Parties, held in Regina, Canada, that it would be reducing the size of the Lower Scheldt river site, located between Antwerp and the Dutch border. Of the three separate parts of this Ramsar site, the Galgenschoor site was to be reduced by 30 hectares in order to accommodate the further expansion of the Antwerp harbour facilities” (Ramsar Convention - Standing Committee, 2000)

<sup>43</sup> “Australia announced on 14 March 1997 that for health and safety reasons, it would relocate the Coode Island chemical storage facility out of central Melbourne to Point Lillias. This would reduce by 20 hectares the 5460-hectare Ramsar-listed Port Phillip Bay (Western Shoreline) and Bellarine Peninsula wetlands. Australia stated that constraints in space would not allow a desired expansion of the current facility to service an economically important expansion of chemical, plastic and rubber industry” (Ramsar Convention - Standing Committee, 2000)

Furthermore, taking into consideration the state capacities of Renac, the state is absolutely certain that this Coast Salt Marsh will fulfill the requirements Ramsar has for identifying a wetland of international importance. This coast Marsh satisfies the criteria 2, 4, and 9 of the Ramsar site criteria<sup>44</sup>, supporting many plant and animal species, including, among others, a small population of the critically endangered Kleinmann's tortoise (*Testudo kleinmanni*) and an endangered subspecies (endemic to Renac) of salt-marsh harvest mouse (*Reithrodontomys raviventris*).

## **II. THE STATE OF AVES VIOLATED INTERNATIONAL LAW**

### **A. Aves failed to comply with the principle of international cooperation.**

Article 5 of the Ramsar convention declares that States shall "consult each other about implementing obligations arising from the Convention especially in the case of wetlands extending over the territories of more than one Contracting Party or where the water system is shared by Contracting Parties. They shall at the same time endeavor to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna". It is clear that there was an obligation of international cooperation in the sustainment of the Adeguri Marsh as it is a transboundary wetland.

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<sup>44</sup> Criterion 2: A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened ecological communities.

Criterion 4: A wetland should be considered internationally important if it supports plant and/or animal species at a critical stage in their life cycles, or provides refuge during adverse conditions.

Criterion 9: A wetland should be considered internationally important if it regularly supports 1% of the individuals in a population of one species or subspecies of wetland-dependent nonavian animal species.

The Resolution VII.19 of this Convention establishes some guidelines for international cooperation which include managing transboundary wetlands. Point 2.1 of the Resolution emphasizes in the risk of invasive species and declares that "For wetlands which cross international boundaries there is a clear responsibility on the part of all jurisdictions involved to do everything possible to restrict the spread of such invasive species, where they would have negative impacts." As it is well known, the outbreak of highly pathogenic avian influenza that occurred in Renac during 2015 was caused after the drainage from Aves's poultry facilities contaminating the wetland and subsequent cross-infection between water birds in and around the Adeguri Marsh and Renac poultry facilities and farms. Aves is a developed country that has the financial means to contain the H1NX from spreading in its country, however Aves didn't take enough measures for it to stop spreading and therefore the virus arrived to Renac through the water birds that had contact with the contaminated water. There was indeed a negligence from the state of Aves considering they didn't do everything possible to restrict the spread of the invasive species of avian influenza.

## **CONCLUSION AND PRAYER FOR RELIEF**

Respondent, the Republic of Renac, respectfully requests the Court to ad judge and declare that:

1. Renac did not violate international law with respect to its responses to the 2014 and 2015 outbreaks of highly pathogenic influenza respectfully submitted.
2. Renac did not violate international law with respect to delisting the Adeguri Marsh wetland as a Ramsar site and as a transboundary Ramsar site and if the proposed compensation is adequate.
3. The Federal States of Aves has violated international environmental law with respect to the principle of international cooperation.

RESPECTFULLY SUBMITTED,

AGENTS OF RESPONDENT