

**MEMORIAL PART APPLICANT, CASE BIRDS VS. RENAC PROTECTION OF THE  
WETLAND TRASBORDER OF ADEGURI MARSH**

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## **DECLARATION OF FACTS**

FIRST: The Federal State of Birds and the Republic of Renac are neighboring sovereign States.

SECOND: The State of Birds is a newly developed country, which has approximately 300,000 km<sup>2</sup> and has a PIB per cápita of \$ 17,500 dollars. Its main characteristic is the "blue crowned crane", its national bird, and therefore this species constitutes an unprecedented cultural importance of the State.

THIRD: The Renac State is approximately 250,000 km<sup>2</sup> and has a GDP per capita of \$ 1,500.

FOURTH: The economies of Birds and Renac are based mainly on agriculture, particularly on poultry production. In turn, the bird watching and ecotourism, relevant activities in each of the previously known countries. However, the two nations focus on economic relations in greater proportion in the trade of poultry products, highlighting the names of the most important products in greater proportion for the population of Renac.

FIFTH: The States of Birds and Renac are members of the:

United Nations Organization (UN)

United States Food and Agriculture Organization

United Nations Organization for Food and Agriculture (FAO)

World Organization for Animal Health (OEI)

SIXTH: The States of Birds and Renac are contracting parties of:

Vienna Convention on the Law of Treaties (CVDT)

Statute of the International Court of Justice

Convention on Biological Diversity (CBD)

Convention on the Conservation of Migratory Species of Wild Animals (CMS)

Migratory aquatic bird conservation agreement of Africa and Eurasia (AEWUA), being within the area in question.

Convention on wetlands of importance especially as a habitat for waterfowl (RAMSAR CONVENTION)

SEVENTH: The States of Birds and Renac have attended and participated in:

United Nations Conference on the Human Environment in Stockholm (1972)

United Nations Conference on Environment and Development in Rio de Janeiro (1992)

World Summit on Sustainable Development in Johannesburg (2002)

Conference "Rio +20" in Rio de Janeiro (2002)

EIGHTH: Birds and Renac share a transboundary wetland of 20,000 hectares, known as "swamp of Adeguri Marsh" which is located approximately half in each of the States and is characterized by its shallowness and fresh water. At the same time, it is an ecosystem rich in biodiversity and provides an important habitat for fish and waterfowl, included in this type of migratory birds; additionally, some rare or threatened species of birds and other animals.

NINTH: Birds and Renac have several privately owned poultry commercial facilities near the Adeguri Marsh wetland.

TENTH: In the year 2000, Aves and Renac established their respective portion of the Adeguri Marsh wetland as a wetland of international importance or Ramsar site, based on the Ramsar Convention.

ELEVENTH: In 2008, Aves and Renac agreed to include Adeguri Marsh as a transboundary Ramsar site, establishing the management of this ecosystem in a cooperative manner, on an ad hoc and informal basis.

TENTH TWO: In 2008, Aves and Renac warn that the recently named Ramsar site complies with four of the nine criteria for the identification of wetlands of international importance, referring to the criteria of supporting vulnerable, endangered or critically endangered species or communities; regularly admit 20,000 or more waterfowl; admit species of plants or animals at a critical stage of their life cycles, or provide shelter in adverse conditions; and finally, to support the regulation of 1% of individuals in a population of a species or subspecies of waterfowl.

TENTH THREE: For the State of Birds it is of vital importance to protect Adeguri Marsh as it is the habitat of the "blue crowned crane", not only because it is known as an endangered migratory species, as established in the Red List of threatened species of IUCN; but it is considered the national bird of that State and the culture that this figure stands out in the Nation of Birds must be protected.

FOURTHEENTH: In the years 2009 and 2012, Aves and Renac experienced outbreaks of highly pathogenic influenza aviary (H5NX), which were located in the poultry facilities that are located in the surroundings of the Adeguri Marsh wetland. The two States, initiated actions to contain the outbreaks, through the selection of hundreds of thousands of domestic birds. Fortunately,

given this problem, there were no effects in humans or waterfowl, but the origin of this toxin could not be determined with certainty.

FIFTEENTH: At the end of December 2013, the government of birds reports in reference of an outbreak of highly pathogenic avian influence in one of the poultry facilities, whose source could not be clarified. Immediately actions were initiated to contain the outbreaks, highlighting that the regular conduit established for this purpose was followed, without directly affecting the neighboring states or the transboundary ecosystem that is of vital importance at an international level.

SIXTEENTH: In early January 2014, the Renac government reported that it presents a severe outbreak of highly pathogenic avian influence, which initially infected domestic birds. Renac in his eagerness to search for responsible for this situation blames the government of Aves and ensures that it originated in the poultry facilities of the latter, transmitted by wild domestic and aquatic birds that live near Adeguri Marsh. In view of this situation, the sighting of an approximate of 500 wild aquatic birds including 150 poultry and a flock of 600 blue-crowned cranes is reported; dead near the Adeguri Marsh wetland species whose infestation was later confirmed.

SEVENTH: Given the situation previously in the state of Renac, the government of that country notifies Aves, who has unilaterally agreed to sacrifice domestic chickens found in the poultry facilities near the wetland. In turn, it establishes that it sacrifices wild aquatic birds that are considered potentially infected, including the flock of blue cranes; that are within the Renac part of the Adeguri Marsh.

FOURTEEN: On January 20, 2014, the government of birds, in application of the diplomatic relations that characterize it, sent a diplomatic note to the government of Renac, expressing its concern for the selective sacrifice of wild aquatic birds near the ecosystem they share and reiterating that the actions taken by Renac are inappropriate as they would directly affect the provisions agreed by the two states on environmental matters. That is why the state of Renac is also invited to reconsider its decision and is invited to act according to the guidelines and guidance established by international law, since otherwise it will be directly affecting the Adeguri Marsh wetland .

NINETEEN: On January 30, 2014, the Renac government sends a note to the government of Aves, stating that if it does not perform the actions of which it was previously notified, it will risk re-presenting an outbreak. It is for this reason that he must execute the actions in order to protect the health, safety and welfare of his citizens who use Adeguri in Renac for recreation and water source. At the same time, it establishes that the decision taken is in line with what is established in the international treaties in force to date, since it has the right to do whatever is necessary to protect its citizens.

TWENTY: On February 2, 2014, Renac eliminated the infected domestic birds and many hundreds of "potentially infected" wild waterbirds that were within their corresponding Adeguri space. These actions contained the outbreak as planned, leaving financial and commercial losses and food shortages, in addition to two citizens killed by the infection.

TWENTY-FIVE: At the beginning of February 2015, there was a small outbreak of highly pathogenic avian influenza in avian poultry facilities. As it happened with the previous

outbreaks, the government of Aves had all the pertinent actions to immediately contain the infection, managing to neutralize it immediately.

TWENTY-TWO: Days later, a severe outbreak of highly pathogenic avian influence occurs in Renac. The government of that state, again in its eagerness to investigate the origin of this virus, establish without theoretical and factitious foundation that the virus spread after Aves made the drainage of the poultry facilities contaminating the wetland and therefore the birds were infected aquatic that were in and around Adeguri. Again, the sighting of dead wild waterbirds was notified, which subsequently after examinations was established to be infected with the virus.

TWENTY-THREE: Once again Renac acting without prior study of the actions to be carried out and transgressing the provisions of international law, notifies Bird that it has decided to intensify its response to avoid outbreaks, planning to sacrifice domestic chickens, potentially infected waterfowl and use disinfectants for the dispensing like chlorine in Adeguri Marsh.

TWENTY-FOUR: on February 9, 2015, the government of Aves sends a diplomatic note to the government of Renac expressing its great concern about the actions notified previously, consisting of the sacrifice of waterfowl and the dumping of disinfectants in the ecosystem, because half of them would be generating potentially harmful effects in Adeguri Marsh. At the same time, it reiterates that with the execution of said actions, the provisions protected by international law are transgressed, since they must adhere to the recommendations established therein. Finally, it suggests the Renac government to carry out actions that improve biosecurity in its agricultural sector.

TWENTY-FIVE: On February 11, 2015, the government of Renac, sends a diplomatic note to the government of Birds in which it states the importance of implementing its response to

previously notified situations, which, in their concept, are in accordance with International Law . On the other hand, it affirms that it will not cause transboundary harm, since its actions counteract the effects of the virus in the surrounding nations. Renac states that he lacks the financial resources to implement security measures and considers that Aves should take the initiative in this matter, because in his government is where the latest signs of the virus that has reached Renac have been presented on two occasions.

TWENTY-SEVEN: From 12 to 14 February 2015, Renac dispensed disinfectants in Adeguri Marsh and disposed of infected domestic and aquatic birds as planned. These infections generated economic losses and lack of food in their nation; In turn, three people died as a result of the virus that was later controlled and a new outbreak has not been experienced.

TWENTY-SEVEN: Birds upon learning of these actions start monitoring the effects of these on the ecosystem, but has been unable to determine them accurately. However, until now it has established that there is no significant degradation in the water quality of birds, as well as, it concludes that the average number of waterfowl in the wetland has decreased since February 2015 by a third.

TWENTY-EIGHT: Renac after experiencing his last outbreak in February 2015, he studies the possibility of considering alternatives tending to the prevention of future infections of highly pathogenic avian influence in the area.

TWENTY-NINE: Renac considers removing the wetland as a Ramsar site to give more flexibility to the prevention and response to outbreaks of highly pathogenic avian influence in the area.

THIRTY: In April 2015, Renac informs the secretary of the Ramsar Convention and the contracting party that is considering the possibility of excluding the Adeguri Marsh as a Ramsar site.

THIRTY-TWO: The parties involved in the Ramsar Convention expressed their concerns and comments and urged Renac to NOT eliminate Adeguri Marsh.

THIRTY: At the end of 2015, the Government of Renac carried out an Environmental Impact Assessment given the potential exclusion of the wetland as a Ramsar site; in it the corresponding agents and citizen of the Government of Birds were involved.

THIRTY-THIRD: On March 3, 2016, Renac notified the parties to the Ramsar Convention that it intends to eliminate Adeguri Marsh in accordance with national interests, protected by International Law; In addition, as compensation, it proposed a 17,000-hectare coastal coastal marine protected area providing a habitat for wild and non-farmed waterfowl. Finally, it establishes that said area may be considered or designated as a Ramsar site.

TREINTAICUATRO: On March 22, 2016, the government of Aves sent a diplomatic note to the Renac government, inviting him to reconsider his plan to eliminate the wetland as a Ramsar site and a cross-border area, since this is a vital importance for the habitat of wild birds and fish, and citizens who carry out activities of all kinds in it. Among other aspects, for which the community would be negatively affected by transgressing international law directly.

TREINTAICINCO: On April 7, 2016, the government of Renac sends diplomatic note to the government of Birds emphasizing the primacy of urgent national interests and the protection of its citizens, so that removing the site would not constitute a transgression of International Law .

THIRTY-NINE: On May 10, 2016, the government of Aves sent a diplomatic note to the Government of Renac reiterating that the planned exclusion violates international law and requires compliance not to cause transboundary damage to the ecosystem they share. It also establishes that urgent national interests are not sufficient and that the compensation offered is regrettable and inadequate to the conservation and rational use of the ecosystem

### **ARGUMENTS**

According to the exposed facts, the requesting party argues based on the environment and international relations the following:

Indicates the Vienna Convention on Treaties, in its Article 26 "Pacta sunt servanda", any treaty in force requires the parties and these must be complied with in good faith, noting also that no treaty may according to its provisions be declared void without consent of both parties, as well as for the suspension of the application of a treaty, according to its application ensure compliance with the guiding principles of international law (Vienna Convention on Treaties, Art, 42, 43, 44). In this understanding implies that non-compliance with treaties or conventions ratified by two states would constitute a violation of international law and whether it is justifiable or not. The nature of "Pacta sunt servanda" creates an obligation and a way to fulfill it in which it only has positive purposes.

In the present case Renac, justifying that the performance of acts of protection to the state for reasons of public health, protection of the economic heritage, and agricultural sustainability, effected the excessive sacrifice of food-producing, companion and protected wild birds, which They were under the influence of the H5NX avian influenza. Chlorine (Cl) attacks were also carried out, which were destined for the total elimination of the bacteria within the wetland,

generating damage to the ecosystem and the terrain itself. Following the thread this activity would generate the breach of Article 26 of the Vienna Convention, which is understood that none of the states that agreed to a treaty can invoke the provisions and foundations of its domestic law without having first applied the agreement between the parties, thereby justifying total or partial non-compliance with said treaty.

Therefore the state of Renac, in its notifications and diplomatic notes which subsequently executed, indicated that the outbreak of influenza, would be preventing the use of their agricultural lands, of which are their main source of economy and food. However, this state ignores several variables of affectation that distort the agriculture of said country, in which it is understood that the lands they use are also habitat of migratory birds and birds in danger of extinction, indicates the UN through the Program of United Nations for the Environment (UNEP), that any affectation, however minimal, to a refuge habitat of migratory birds, would generate a decline in the rhythm in which these birds visit this ecosystem. This institution also indicates that the protection of agricultural land is not considered a justifiable argument if it generates deterioration in the wetlands. The executive secretary of the Convention on Migratory Species points out:

"Migratory species are very valuable and provide essential services. They protect the well-being of people, food security through pollination, seed dispersal and pest control, keeping the environment clean as vultures do when eating the carcasses of other animals. "(UN, 2017)

It remains between said that the performance of actions in terms of agricultural protection are feasible except if these violate migratory bird ecosystems and these are protected or not, would

face an increase in environmental damage in the future if we take into account that these birds give the environment natural stability.

In this sense is understood the transgression of the "Agreement on the conservation of African and Eurasian Waterbirds" signed between the two states in which both are committed cooperatively to care for them, highlighting that for our state Birds, one of these Migratory birds represent a patriotic symbol, and of cultural remembrance. The Renac state in its arguments in which it emphasizes the care of agriculture and that this is its main economic means, makes bad use of the already named agreement, where it is established that these birds can be the main factor by which zones surrounding these ecosystems are so fruitful (AEWA, 2014). Of the areas that circumscribe the FAO, the main institution to which the state of Renac, is linked, aims to understand agriculture and natural resources as assets of global public interest, that is, this association seeks to highlight this factor, taking into account that these states have the quality of border and the average humidity of natural resource of both countries has the quality of cross-border, implies in advance that the resources can not be divided or of single interest of a state. Despite the desire of Renac and the executions of environmental damage, added to this its departure from Ramsar does not imply or mean the appropriation and excessive use that this state is going to make within its territory and the specific use of the wetland. In addition to the possible environmental damage that its transgressive activities may continue to generate (FAO, 2017)

The World Organization for Animal Health or OIE, which is in charge of providing assistance for the control of the viruses presented to the animals, points out that there are two means of control in case of avian influenza, one of which is eradication and another vaccination, the latter tends to work as a means of precaution after the effect of bird flu to prevent future outbreaks. The state of birds which we represent on the occasions in which this outbreak occurred made the proper controls which allowed to avoid that after the eradication of influenza spread to a greater magnitude, an act which Renac did not visualize and execute among his control plans to the flu. This indicates the low protocol framework that the defendant state has in these cases, in which it takes more than orthodox measures for social and environmental protection actions. On the other hand, the OIE, as the entity in charge of handling these matters, was not notified by Renac, this country indicated that due to its low economic level and being categorized as a developing state, it could not manage the appropriate environmental controls to the extent necessary. This type of situation, however, the state does not request any help, nor does it make use of the principles of cooperativism, which were drawn up as rector for the management of the wetland and the birds that inhabited this ecosystem.

However, the OIE indicates that in the event that sacrifices were made and they caused irreparable damage or injury, in those cases where the causal link between acts and damage was caused between states, the state that committed the damage must indemnify in a patrimonial manner the damages caused (OIE, 2017). In which case the responsibility for the damage generated on a larger scale eminently indicates that Renac must respond.

Ramsar convention responsible for the protection of wetlands, which was ratified by Aves and Renac, which after this the demanding country decides to leave this to have freedom of use of the wetlands that by right corresponds to it according to its territorial framework, Renac demonstrates the misuse of ecosystems, indicates the Ramsar convention in article 4 numeral second, which indicates that the situations in which a state by national interest wishes to delimit the wetlands should compensate the damages generated by the loss of resources, as well as establishing new reserves for waterfowl and giving them special protection as well as respect for the care of their habitat. It is demonstrated according to what happened in the Renac-powered country, which without even generating such contributions violates any form of care for the wetland and its ecosystem. In other words, Renac does not comply with the stipulated contract. Added to the above The wetland has cross-border characteristics, this does not mean that it can be territorially divided, even if this is considered a protected area the damage by one of the states causes damage and detriment to the other contracting state of the Ramsar convention (current convention Ramsar , 2017).

## CONCLUSIÓN

We can conclude this way and take into account the following arguments and key points for the analysis of the litigation.

1) It is clear the violation of the treaties, conventions and ratifications made by Aves and Renac by the republican state of Renac, in which the latter ignores the protocol and due process to be performed for the annulment and withdrawal of a convention, as well as acting in bad faith and violating the "pacta sun servanda", indicating that the obligations that he had, he was not going to fulfill.

- 2) The bad faith and ignorance with which the country of Renac acted is demonstrated by not requesting assistance from the institutions to which it is subscribed, such as the FSO and the OIE.
- 3) Despite acting under the framework of defense to national interests, this state does not seek to compensate for the damages caused and to protect in the future the ecosystem to which it had caused damage, in breach of the Ramsar convention.
- 4) Renac does not use the international media adequately, in the understanding that they use the notifications as a means to indicate actions that they were going to execute, without fully giving a stage for debate and collaboration on issues of environmental management.
- 5) The international transgression of Renac, for the sacrifice of birds in extinction which are the national symbol of Birds, without prompting to invest in vaccination and subsequent quarantine of birds, brought with it damages of transnational level, in the understood that these birds were not only in these two states, but because of their migratory nature the damage would be of an even higher level.
- 6) It is demonstrable, according to UN studies, that the deterioration of an ecosystem in which migratory birds live is not considered reasonable, for reasons of agricultural economy. According to studies, these birds help the growth of these sectors.
- 7) The damage caused to the wetland by Renac due to the excessive use of chlorine, allows us to point out that since this is a chemical which follows the currents of the wetland, it caused damage to the ecosystem equivalent to the total of the wetland territory.

### QUESTIONS TO SUBMIT

The state of Renac that treaties and conventions have currently ratified with the state of Birds?

What is the principle of cooperativism acquired between Renac and the state of Birds?

According to the principle of cooperativism, you as representatives of the State of Renac, must generate spaces for mutual aid to be carried out?

Would the performances as an independent state, would cause misrepresentations to the relations between both states?

Is the application for assistance to the state of Birds mandatory when there is an interest in environmental protection in the middle?

Does the decision to be about protecting the environment then have to be accepted by the parties?

Does the use of the agricultural economy represent a greater benefit for Renac?

Why does not environmental care towards the wetland represent a benefit of the same level as care for the agricultural environment?