

**IN THE 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***

V.

**THE REPUBLIC OF RENAC
RESPONDENT**

30 November 2017

MEMORIAL FOR THE APPLICANT

THE 2017-2018 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

NOVEMBER 2017

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STATEMENT OF JURISDICTION

Pursuant to the Joint Notification and the Record concluded on 4th July, 2017, including the Clarifications agreed to therein, between the Federal States of Aves and the Republic of Renac [“the Parties”], and in accordance with Article 40(1) of the Statute of the International Court of Justice, the Parties submit to this Honourable Court its dispute regarding the differences between the Parties concerning the Questions Relating to Responses to Highly Pathogenic Avian Influenza and Transboundary Wetlands.

In accordance with Article II (1) of the Special Agreement, notified to the Court on 10th July 2017, this Honourable Court is requested to adjudge the dispute in accordance with the rules and principles of general international law, including any applicable treaties. The Parties have agreed to respect the decision of this Court.

QUESTIONS PRESENTED

I. Whether Renac violated international law by culling wild waterbird and dispensing disinfectants into de Adeguri Marsh, as responses to the 2014 and 2015 outbreaks of highly pathogenic avian influenza.

ii. Whether Renac violated international law by delisting the Adeguri Marsh as a Ramsar Site and as a Transboundary Ramsar Site, and by failing to provide adequate compensation.

STATEMENT OF FACTS

Economic and geographical context of Aves and Renac

The Federal States of Aves and the Republic of Renac are neighboring sovereign states. Aves is considered a recently developed country, and Renac a developing country.

International instruments to which Aves and Renac are Members and Contracting Parties

Aves and Renac are Members of the United Nations, Parties to the Statute of the International Court of Justice, the Food and Agriculture Organization to the United Nations (hereinafter “FAO”) and to the World Organisation for Animal Health (hereinafter “OIE”). They both are Parties to the Vienna Convention on the Law of Treaties (hereinafter “VCLT”); to the Convention on Biological Diversity (hereinafter “CBD”); to the Convention on the Conservation of Migratory Species of Wild Animals (hereinafter “CMS”); and to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (hereinafter “AEWA”). Also, both Aves and Renac are Contracting Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (hereinafter “Ramsar Convention”), and located within the Agreement Area of AEWA.

The Adeguri Marsh

The Adeguri Marsh is a shared transboundary wetland, in which both Aves and Renac have a 20,000-hectare of it. In 2000, Aves and Renac designated their respective portion of the Adeguri Marsh as a Wetland of International Importance (hereinafter “Ramsar Site”) under the Ramsar Convention, and in 2008, Aves and Renac jointly listed the Adeguri Marsh as a Transboundary Ramsar Site.

Poultry and ecotourism activities around the Adeguri Marsh

Renac and Aves engage in commercial trade in poultry, birdwatching and ecotourism in the Adeguri Marsh. The blue crowned-crane (hereinafter “BCC”) is a migratory species that winters in the Adeguri Marsh, that is listed as endangered in several treaties and that has a particular importance in Aves because it is its national bird.

In 2009 and 2012 Aves and Renac experienced outbreaks of highly pathogenic avian influenza (hereinafter “HPAI”) in the Adeguri Mash. In 2013 Aves experienced a new outbreak. Then in January 2014, Renac experienced an outbreak from which 20 BCC were found infected.

Renac notified Aves government about its plan to cull around 450 BCC cranes in its portion of wetland. On 20 January 2014, Aves sent a diplomatic note to Renac expressing its concerns regarding its plan. Aves guarantees that to cull only the affected domestic poultry and to work to improve agricultural practices to prevent future outbreaks is a better solution. Aves highlights the fact that BCC is an endangered species and that culling wild waterbirds could lead to a greater dispersal of the birds what could spread the virus elsewhere.

On 30 January 2014 Renac answered Aves’ note affirming that the cull of likely infected waterbirds was the best option to stop the outbreak. Renac also pleaded this measure was necessary to protect health and wealth of its population. On 2 February 2014, Renac culled many hundreds of wild waterbirds including around 450 BCC. This measure caused financial losses for commercial facilities and food shortages. In 2015 Aves experienced a small outbreak that was promptly contained. Then Renac experienced an outbreak that was likely to have caused the death of several wild waterbirds like the BCC. Because of that Renac notified Aves about its plan to cull more wild waterbirds and to dispense disinfectants into the Adeguri Marsh.

On 9 February 2015, Aves sent a diplomatic note expressing its concerns regarding to Renac’s plan. Aves recommended Renac to follow some Ramsar technical reports and to improve biosecurity in order to preserve the Adeguri Marsh and to comply with its international obligations. Renac responded informing that it will execute its plans because they did not violate international conventions, because Renac do not have the resources to develop biosecurity and because the outbreak in Renac was supposed to be caused by Aves.

On 12-14 February 2015, Renac executed its announced plan. Eight people in Renac were reported infected, from which five recovered fully and three died as a result of the virus. Since then, Aves has confirmed that the average numbers of wild waterbirds including the BCC has decreased by a third.

Renac looked for more flexibility delisting the wetland as a Ramsar Site. Renac informed the respective authorities and Aves of its delisting plans, received feedback of this plan, urging not to do it. Renac conducted an extensive environmental impact assessment including several individuals and Aves, and it notified its proposal to compensate the delisting with enhancing and preserving a rural area of 17,000-hectare coastal salt marsh which provided habitat for some wild waterbirds but not BCC. Renac said it would consider to propose this area as a Ramsar Site.

On March 2016, Aves communicate to Renac that the delisting would negatively affect its rights and interests in protecting and using the site, and the functions that it has provided for both countries for years, in economic and recreational aspects. Aves advice the negative effect of the delisting upon fish, wild waterbird and BCC whose situation was perilous after Renacs response to the 2015 outbreak. Renac expressed its disagreement with Aves, invoked its sovereignty, and that it had to protect health, safety, and economy of future outbreaks.

On October 2016, Renac following the required process, delisted the wetland. From that moment, Renacs and Aves negotiations to resolve their dispute failed, which brought them to the International Court of Justice.

SUMMARY OF ARGUMENT

I

Renac violated the CMS because it was not diligent on being feasible and appropriate, taking the endeavours to protect the habitat of the BCC to remove it from danger of extinction, neither it did not take the appropriate measures to protect the specie of the adverse effects of activities that impede their migration. Also, Renac violated the AEWA article III because in an emergency situation such as the outbreaks of 2014 and 2015, it did not ask to Aves to coordinate a concerted action in order to protect the BCC. Neither, it did not take the measures for the management and rectoration of the Adeguri Marsh, significantly affecting the endangered specie, BCC. Renac also violated the CBD because it made transboundary harm to Aves by activities under their jurisdiction, such as culling and dispensing the chlorine.

II

Renac violated the Ramsar Convention because it did not have any reasons to claim an urgent national interest to delist the Adeguri Marsh as a Ramsar Site and as a Transboundary Ramsar Site. Also, having exercised wrongfully this right, violated the customary mandate of the No-Harm Rule, as it harmed Aves interests and rights due to the interconnectedness of the shared wetland. Renac also violated international law as it did not provide, as far as possible and in particular, a sufficient compensation for delisting the wetland.

ARGUMENT

I. THE REPUBLIC OF RENAC VIOLATED INTERNATIONAL LAW BY CULLING WILD WATERBIRDS AND DISPENSING DISINFECTANTS INTO THE ADEGURI MARSH, AS A RESPONSE TO THE 2014 AND 2015 OUTBREAKS OF HPAI.

A. RENAC VIOLATED ARTICLE III:4 OF THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (CMS).

1. Renac failed to endeavour to conserve and restore the habitat of the BCC in order to remove the specie from danger of extinction

According to Article 3.4 of the CMS, States are required to endeavour to conserve, and, as feasible and appropriate, restore the habitat of migratory species in order to remove the specie from danger of extinction. To endeavour means to make an effort, try, or attempt to do something.¹ To *conserve* includes ‘to keep and protect something from damage, change, or waste’.² To *restore* may be understood as ‘to *return* something to an earlier good condition or position’.³ These actions fall in the specific object of removing the specie from danger of extinction.

In the present case the habitat corresponded to the Adeguri Marsh, which ‘is rich in biodiversity and provides important habitat for fish and waterbirds, including migratory waterbirds’.⁴ The BCC is an endangered specie included in Appendices I and II of the CMS⁵ whose habitat is the Adeguri Marsh, and where interacts with species such as ducks, swans, or cormorants.⁶ Renac did not take the proper measures to conserve and restore this site. Renac did not make an effort, or even tried to keep the Adeguri Marsh from the damage, change and waste. In effect, that was even produced by the actions Renac took. It also failed its obligation of keeping the habitat of migratory species with its authentic properties, as it was at the beginning. By culling the wild waterbirds, and the BCC as well, or by dispensing the chlorine into the wetland, Renac did not take the proper measures to reduce the danger of extinction.

¹ Cambridge Dictionary. <https://dictionary.cambridge.org/es/diccionario/ingles/endeavour>

² Ibid.

³ Ibid.

⁴ *Compromis* (11)

⁵ Ib. (13)

⁶ Ib. (11).

And as Renac produced the damage to the habitat of the species, it did not turn it into the previous good and stable condition in which it was before, it means it did not conserve the habitat.

Respondent could argue that the obligation is of means, and not of result, so it made the actions to stop the HPAI that were within its reach, according to its annual income, and then, it did not breach this obligation. But, this “endeavour to” should be interpreted according to the due diligence that must be taken in order to try to remove the BCC from danger of extinction. What Renac really did was culling and reducing the proportion of the species population. Therefore, instead of reducing the risk of endanger to the blue-crown crane, Renac acts increased it.

2. Renac did not take the appropriate measures to minimize the adverse effects of activities that impede the migration of the BCC.

According to Article 3.4(b) of CMS, States shall endeavour to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species. Appropriate measures could be defined as an action or set of actions ‘*suitable or right for a particular situation or occasion*’⁷. To *prevent* could be understood as the action of stopping something from happening⁸. The moment in which States must prevent, is before the prejudice is done, for the latter must be avoided. To *remove* must be understood as it is developed in the moment in which the damage has already been done. Indeed, it means to “take something away from somewhere”. To *compensate* must be comprehended as ‘to provide something good or useful in place of something’⁹. This latter demands an action of giving a positive *thing* in exchange of the previous damage caused.

There were no appropriate measures taken by Renac to reduce the possible negative consequences that could be caused by activities that not let migratory species to ‘cyclically and predictably ‘cross one or more national jurisdictional boundaries’¹⁰. Altering species’ migration patterns affects not only the migratory specie, but also the community with which the specie interacts¹¹. Renac did not make any previous investigation or study, before the culling and

⁷ Cambridge dictionary. www.dictionary.cambridge.org

⁸ Cambridge Dictionary. From: <https://dictionary.cambridge.org/es/diccionario/ingles/prevent>

⁹ Ibid.

¹⁰ Article I, CMS.

¹¹ Ib.

dispensing, with concrete data showing the real need, environmental implications, and habitat or biological conditions to develop activities in order to stop the outbreak effectively. It is also *necessary* to recognize that the culling of such amount of species not proved to be infected with a previous certified study was a disproportionate measure.

3. Renac failed to take feasible and appropriate measures to prevent, reduce and control factors which are likely to further endanger the BCC.

According to Article 3.4(c) of CMS, States shall endeavour to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species. Something to be feasible could be “able to be made, done or achieved ¹²”; and appropriate, as already mentioned before, alludes to something that is ‘suitable or right for a particular situation or occasion’¹³. In this sense, the obligation is of means and not of a result.

In this case, Renac’s conduct did not consider the diligent management of a *protected area*. The factor that could further endanger species were the responses taken by Renac to the HPAI spreading because the alteration caused by human interference can raise the risk of the specie extinction ¹⁴. By culling the wild waterbirds and dispensing the chlorine into the wetland, Renac altered ecosystem’s habitat, furthering the endangerment of the specie. In that sense, in these latter circumstances, Renac should have been done actions to *prevent* –it means to stop the activity which increases the risk-, to *reduce* –or take actions to decrease the level of risk of extinction of the BCC-, and to *control* – to order, to limit, or rule¹⁵ these factors- in order to fewer the risk of extinction of the specie. To prevent is previous the questioned activity, and to reduce and control are during the activity is being enhanced. In fact, Renac made a continued activity, which vulnerated through a *constant* period of time, by culling the species in several times, throughout the outbreaks of 2014 and 2015.

¹² Cambridge Dictionary.

¹³ Cambridge Dictionary.

¹⁴ According with Baena and Halffter (2008) in its work “*Extinction of Species*” it was a case of a bird extinction caused by human interference. In their words: “As for the Lerma (*Quiscalus palustris*), which was circumscribed to the wetlands of central Mexico, its disappearance is associated with the alterations suffered by these wetlands in the last 200 years due to urban, industrial and agricultural use (Íñigo-Elías and EnkerlinHoefflich 2003)”

¹⁵ Cambridge Dictionary.

B. RENAC VIOLATED THE AGREEMENT ON THE CONSERVATION OF AFRICAN-EURASIAN MIGRATORY WATERBIRDS (AEWA).

1. Renac violated Art III culling wild waterbirds like BCC.

Art. III. 2.(f) demands States Parties to “cooperate in emergency situations requiring international concerted action and in identifying the species of migratory waterbirds which are the most vulnerable to these situations as well as cooperate in developing appropriate emergency procedures to provide increased protection to these species in such situations”. An emergency situation is one that causes a serious danger and requires a quick response to avoid further damage. The first part of this obligation is to cooperate requiring a previous concerted action, what means that states must require other states affected by the situation of imminent danger to design a plan before applying any measure. This obligation can be fulfilled by asking the other state what it thinks should be done according to its criteria in order to create a joint strategy. The second part of the obligation forces the states to identify the most vulnerable species in the emergency situation, which means to know what specific species are at risk and what their needs are. The third part of the obligation demands states to develop appropriate emergency procedures to provide protection to the endangered species identified in the previous point, what means to execute the plan concerted with the other states affected in the agreed terms with the objective to protect.

In this particular case, Renac was in an emergency situation and had the duty to ask Aves to coordinate a concerted action in order to protect wild waterbirds, but this previous step was never fulfilled. In reality Renac design its own plan and informed Aves about it, there did not exist a joint plan. Respondent will likely argue that Renac informed Aves about its plans and that it shows its commitment to cooperate, but the reality is that Renac only sent some diplomatic notes that did not show its intention to cooperate. On the contrary, these notes were mere formalities to let Aves know decisions that where already taken.

With respect to the identification of endangered species, Renac and Aves knew that the BCC is part of the list of waterbird species to which the Agreement applies¹⁶, and that it is listed

¹⁶ AEWA Annex 2.

as an endangered species in other treaties¹⁷, so the identification was well done. Finally, Renac did not comply with the third part of the obligation because it developed its own plan without taking into account Aves recommendations. Even when Aves proposed to cull only domestic poultry and work to improve agricultural practices to prevent future outbreaks¹⁸, Renac culled a lot of endangered species.

Renac did not take into account Aves recommendations to design the strategy in the previous moment nor in the moment of the execution. It was a clear unfulfillment of the obligation stated in the agreement.

2. Renac violated Article III by dispensing disinfectants into de Adeguri Marsh.

Article III. 2(c) requires States Parties to “*identify sites and habitats for migratory waterbirds occurring within their territory and encourage the protection, management, rehabilitation and restoration of these sites*”. In one hand, this obligation demands states to individualize the places which are of vital importance for migratory waterbirds to live, which involves knowing its existence and its characteristics. In the other hand, this obligation demands states to encourage the protection of that places, which means to make the greatest possible effort to protect them.

The Adeguri Marsh provides habitat for a lot of migratory waterbirds as the BCC¹⁹, and Renac, knowing the important role of the wetland, decided to dispense disinfectants into its water. This action is contrary to the duty of protecting the sites and habitats for migratory waterbirds because Renac did not show any effort to find other less harmful measures. In reality Renac did not took into account other ways to face the problem, it did not make the greatest possible effort to protect de Adeguri Marsh. Dispensing disinfectants into the wetland can bring future problems for the maintenance of water quality and for the protection of endangered species life.

At the same time, article III. 2.(d) established the duty to coordinate efforts for the maintenance of habitats of migratory waterbird species, “in particular where wetlands extend over the area of

¹⁷ *Compromis*. Fact 13.

¹⁸ *Compromis*. Fact 17.

¹⁹ *Compromis*. Fact 13.

more than one Party to this agreement”. This obligation demands states to take into account other parties to design the plan to face the emergency and to execute it, specifically when wetlands are shared areas between them. In this particular case the Adeguri Marsh is a shared area between Renac and Aves, and the best way to proceed would have been taking into account Aves concerns and designing a strategy to face the emergency situation without causing damage to the wetland. Renac, instead of cooperating with Aves, decided to dispense disinfectants that can cause a lot of damage in the future.

C. RENAC VIOLATED THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

1. Renac violated Article III by taking measures within its jurisdiction and control that affected the environment of Aves.

According to Article III of the CBD, “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”²⁰. This obligation implies for States to do not abuse of its rights towards the other neighbour State. Sovereignty must be recognized, but it is not an excuse to abuse of rights or to create a disequilibrium in the other state’s ability to enjoy its own.²¹

In this particular case, the meaning and relevance of the preservation of the Adeguri Marsh is higher for Aves, not only regarding the biological importance, but also because it is a vital for the BCC. In fact, the BCC “is the national bird of Aves and is a popular subject in myths,

²⁰ Article III CBD.

²¹ The ICJ in the Case *Hungary v- Slovakia*,²¹ mentioned this principle recalling the duty of caring for environment for states and the mankind: “*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.*” (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I. C. J. Reports 1996, pp. 241 -242, para. 29.*)”

stories, music, and art in Aves”²². Renac changed the entire wetland by culling wild waterbirds and dispensing chlorine in the site and altering its ecosystems. Renac's actions caused damage in Aves. Renac's conduct was arbitrary in the sense that it used unlimited power under its jurisdiction without considering Aves wishes²³. It is a causal link between Renac's actions and the shared environmental damage.

In conclusion, Renac violated article III of the CBD, because it did not ensure that activities within their jurisdiction or control do not cause damage to the environment of other States, such as Aves, an area beyond its national jurisdiction.

2. Renac violated Article VII because it did not monitor and identify sustainable techniques to protect the blue-crowned crane species and the Adeguri Marsh ecosystems.

According to Article 7(c) of the CBD, States have the obligation to, as far as possible and appropriate, identify processes and categories of activities which have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques²⁴. It means “development that meets the need of the present without compromising the ability of future generations to meet their own needs”²⁵. Renac failed to manage sustainable techniques as it did not use in a properly way the components of the biological diversity, by culling the wild waterbirds without scientific proof and previous investigation to argue that the culling was worth it. Also, Renac conduct lead to a long-term decline of the biological diversity²⁶. of the BCC, when altering their habitat by culling hundreds of species. Therefore, these sustainable techniques were not taken by Renac, in order to protect the BCC and Adeguri Marsh ecosystems.

²² *Compromis*. (14)

²³ Based on the definition of arbitrary of the Cambridge Dictionary. *Arbitrary*: ‘Using unlimited personal power without considering other people’s wishes’.

²⁴ Article 7 CBD.

²⁵ UN World Commission on Environment and Development, *Our common Future* (1987) cited by Birnie, P., Boyle, A., Redgwell, C., on International Law and the Environment 108 (2009)

²⁶ In the CBD, Article 2 it is stipulated that “sustainable use means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

3. Renac breached to maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to the previous obligations.

This obligation is directly related with the previously mentioned. Renac did not monitored and controled the adverse effects, such as informing how many BCC were lasting; how their activities changed the ecosystems dynamics and migratory activities; nor even endeavour to inform to Aves the rate of alteration in the wetland such as dating the ph alteration in the wetland water, or even notify to Aves how those activities could affect their cultural inheritance, as the bluecrowned crane is of significantly cultural importance for Aves.

D. RENAC VIOLATED THE RAMSAR CONVENTION

1. Renac violated Article 3.1 of the Ramsar Convention because it didn't act according to the principle of wise use when culling wild waterbirds and dispensing disinfectants into the Adeguri Marsh.

Article 3.1 of the Ramsar Convention demands states parties to implement plans to promote the conservation of the wetlands included in the Ramsar List and to act according to the principle of wise use.

To implement plans to promote conservation of wetlands means to design and develop actions to protect the wetlands and to preserve its natural characteristics. The wise use of wetlands is *“the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development”*²⁷. *“Within the context of sustainable development”* means to protect the affected area today and to preserve it for the future. In few words, states parties shall make the biggest effort to protect wetlads. They shall try all the possible alternatives before applying a harmful measure, in order to maintain wetlands alive for the future.

Renac did not comply with this requirement because it culled a lot of wild waterbirds and dispensed disinfectants into the Adeguri Marsh. Ramsar Resolution IX.23 says that *“the attempts to eliminate HPAI in wild bird populations through lethal responses such as culling are not feasible and may exacerbate the problem by causing further dispersion of infected birds”*. As can be seen, culling waterbirds can increase the problem instead of solving it. Renac could take

²⁷ Ramsar Handbook 1.

other less harmful action, for example, it could ask Aves for help. Nevertheless, Renac preferred to attempt against the life of a species in danger of extinction.

At the same time Renac decided to dispense disinfectants into the Adeguri Marsh, an action that can affect the water quality necessary to maintain the health of the ecosystem²⁸. To pollute the water in this way is a non-sustainable practice, and how can it be expected, it affects the ecosystem, its actual conservation and its existence for future generations.

2. Renac did not comply with its duty to cooperate because it did not take into account Aves concerns about its plan to cull wild waterbirds and to dispense disinfectants into de Adeguri Marsh.

The duty to cooperate is a conventional and a customary rule of international law that states that “*international matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big or small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects*”²⁹. The cooperation means to inform the other affected states about the consequences of the activities and measures that are going to be taken, to consult and to negotiate with them.

i. Renac failed to exchange information with Aves.

States have the obligation to exchange all the information with the other potentially affected states regarding the possible consequences of activities likely to cause damage in the environment. This obligation means to inform about the measures that are going to be taken tentatively and to show the positive or negative consequences that those measures have in reality.

In this particular case, Renac failed to comply with this duty because the shared information with Aves was insufficient to know the negative consequences of Renac’s plans. Respondent will likely argue that Renac sent some diplomatic communications to inform Aves, but the reality is that those diplomatic communications did not contain any relevant information about the real damages that the procedures were going to have. These communications were mere formalities that did not show the real impact of the decisions taken by Renac.

²⁸ Ramsar Technical Report 7.

²⁹ Stockholm Principle 24.

ii. *Renac failed to consult and negotiate with Aves.*

Consultations made to other states beyond the cooperation principle “*must be genuine, must comply with the rules of good faith and must not be mere formalities*”³⁰. This means that the negotiations must be established with the objective of studying the concerns of the other part, taking them into account in order to reach an agreement that does not cause harm to any of the parties. Although states are not strictly bound to reach an agreement³¹, they have to give reasonable weight to other parts concerns³²

In this particular case, Renac sent some diplomatic communications to Aves telling what it was going to do, but did not considered the concerns expressed by Aves many times, and did not took into account Aves recommendations like those of culling only the affected domestic poultry and working to improve agricultural practices to prevent future outbreaks³³. Despite the fact that Aves disagreed on numerous occasions, Renac remained firm in its plans of culling wild waterbirds and putting disinfectant on the Adeguri Marsh. Renac never had a conciliatory position.

II. THE REPUBLIC OF RENAC VIOLATED INTERNATIONAL LAW BY DELISTING THE ADEGURI MARSH AS A RAMSAR SITE AND AS A TRANSBOUNDARY RAMSAR SITE, AND BY FAILING TO PROVIDE ADEQUATE COMPENSATION.

A. RENAC VIOLATED ARTICLE 2.5 OF THE RAMSAR CONVENTION AS THERE WHERE NO REASONS OF URGENT NATIONAL INTEREST TO DELIST THE ADEGURI MARSH.

Article 2.5 of the Ramsar Convention provides to the Contracting Parties, the right to, solely “because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List”³⁴. Urgent is understand as “requiring immediate action or attention”³⁵, the Standing Committee of the Ramsar Convention, has understood this term through

³⁰ Lac Lanoux Arbitration (France v. Spain), Arbitral Award, 1957, pg. 15, 23

³¹ Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931 P.C.I.J.; Lac Lanoux Case; Pulp Mills Case.

³² Lac Lanoux Case *ut supra*. .

³³ *Compromis*, fact 17.

³⁴ Ramsar Convention, Art 2.

³⁵ Oxford dictionary. www.oxforddictionaries.com

DOC.SC25- 8 as “pressing, impelling; demanding or calling for prompt action”³⁶. The more critical the situation, the more urgent the need for action”³⁷. In summary, “urgent” has the connotation of being significant, important, that should be prioritized in the shortest period of time.

Renac cited as urgent national interests, inter alia, the necessity to protect human health, human safety, and their economy from imminent outbreaks of HPAI. Firstly, these national interests, in Renac’s case, do not constitute an urgent situation. Renac has faced, with Aves, three different outbreaks of HPAI, which have occurred in different moments during 2009 until 2015. During this time, there has been a total of twelve people affected by the virus, from which seven recovered and five died. Each human life is of absolute importance, but to enhance this situation to an urgent situation that must be immediately faced, is disproportionate. Renac invoked article 2.5, when it did not accomplish with the requirements to do so. There was not a massive health or safety problem to its citizens, the affectance of five individuals can not be representative of an urgent and significant health and safety problem that should have been recognized as an urgent national interest.

1. Alternatively, even if Renac’s exercise its right to delist the Adeguri Marsh as a result of an urgent national interest, its exercise, violated the No-Harm Rule.

This obligation “denies the existence of a sovereign “right” to engage in or allow activities having harmful transboundary effects”³⁸and limits states’ sovereignty with “the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”³⁹

Renac decided to delist the Adeguri Marsh after having explored inexpensive ways to prevent future outbreaks of HPAI. However, due to the interconnectedness of environment, the measures and flexibilization that Renac aimed with the exercise of its right, affected and harmed Aves. The Adeguri Marsh is a source of ecotourism, birdwatching, recreational activities,

³⁶ 25th Meeting of the Standing Committee, DOC.SC25-8.

³⁷ Ibidem.

³⁸ Birnie, P, Boyle, A., Redgwell, C (2009). The Fundamental Principles of International Environmental Law. p. 23.

³⁹ Stockholm Principle 21.

livelihoods, for both countries, and even a habitat in which relies a cultural value for Aves. The delisting of the wetland, provided to Renac, the permission to use inexpensive ways to deal with the virus, such as draining areas and putting up bird scarers. This exercise of its right, its causing and allowing an environmental harm outside their borders, in Aves territory, as it shares a fifty percent of the affected habitat. The use of this right, allows to the use of measures, that do not promote the use of the habitat by species such as the BCC, which has a huge cultural value for Aves and even its traditions are affected. Therefore, Renacs' exercise of its right, thought in a way that could be more inexpensive for their economy, harms Aves interests in protecting this environment, and its conservation, under the Ramsar Convention, due to its environmental, economic and cultural interests.

Lastly, it is remarkable that there is not a subsequent practice of states, to delist or even to restrict the boundaries of wetlands already included by it in the List, taking into account that the delisting has never happened⁴⁰, Renacs' situation constitutes an insolite case. It is certain that this does not bind Renac, however, it does evidence, the commitment of countries to chase the achieving the Convention purposes, the value that states give to this commitment, and the severity and gravity of invoking clause 2.5.

B. THE REPUBLIC OF RENAC VIOLATED INTERNATIONAL LAW BY FAILING TO PROVIDE ADEQUATE COMPENSATION.

1. Renac violated Article 4.2 of the Ramsar Convention as it did not compensate for the loss of the wetland resources as a result of delisting the Adeguri Marsh.

Compensation results as an imperative obligation to the Contracting Party of the Ramsar Convention which in its urgent national interest “deletes or restricts the boundaries of a wetland included in the List”⁴¹. It is intended to be an obligation that the Contracting Party should accomplish as far as possible, and whether exists any loss of wetland resources as a result of its delisting. The interpretation of this obligation should be guided towards the interpretation section of the Vienna Convention on the law of Treaties, which establishes that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the

⁴⁰ Ramsar. www.ramsar.org/sites-countries/change-in-ecological-character

⁴¹ Ramsar Convention, Art 4.2.

treaty in their context and in the light of its object and purpose.”⁴² The obligation of compensation should be interpreted under the Ramsar Convention purpose which reads “to stem the progressive encroachment on and loss of wetlands now and in the future.”⁴³ The Convention also shows its conviction to “the fundamental importance of wetlands in terms of economic, cultural, scientific, and recreational value.”⁴⁴ Compensation, should also be understood as a measure to cover the effects of the habitat affected negatively. It is under this context, that the obligation of compensation for the loss of the wetland resources should be interpreted.

Renac failed in its obligation to compensate for the loss of the wetland resources provided by the Adeguri Marsh due to its delisting, which results in its violation of Article 4.2 of the Ramsar Convention. Renac did not proposed a certain compensation for the loss of the wetland resources, it attempted to provide the enhancement and preservation as a protected area a rural 17,000-hectare coastal salt marsh about 300 miles from the Adeguri Marsh as compensation. However, this does not constitute a compensation for the lost of the Adeguri Marsh because the new place provides environmental resources to some wild waterbirds but not to the BCC. In second instance, the wetland, provides an important source of economic and educational value, as it is open to the public for ecotourism and Birdwatching. The plan to enhance and preserve the coastal salt marsh, did not include an economic perspective, to compensate the loss of this resource provided by the Adeguri Marsh. Additionally, there was not an effort of Renac to compensate as far as possible, as it did not showed an effort to assess viable alternatives to the Adeguri Marsh.

2. Renac failed to compensate in particular, as it did not create additional nature reserves for waterfowl and for the protection either in the same area or elsewhere of an adequate portion of the Adeguri Marsh.

Adequate has been defined as satisfactory or acceptable in quality or quantity⁴⁵. In qualitative terms the coastal salt marsh provided by Renac as compensation does not protects an adequate portion of the Adeguri Marsh. The area of coastal salt marsh proposed as compensation by Renac, as a result of invoking Article 2.5 of the Ramsar Convention, provides habitat for

⁴² Vienna Convention on the law of treaties, 1980, Art 31.

⁴³ Ramsar Convention.

⁴⁴ Ramsar Convention.

⁴⁵ Oxford Dictionary. www.oxforddictionary.com

some wild waterbirds but not BCC. The habitat that the Adeguri Marsh provides for an estimated flock of six hundred BCC, is not being protected in an adequate portion, as the coastal salt marsh, can not even provide the habitat required for a significant amount of the remaining birds in the wild. The wetland supports vulnerable, endangered or critically endangered species or threatened ecological communities, as well as plant and/or animal species at a critical stage in their life cycles or provides refuge during adverse conditions. The coastal salt marsh does not maintain or increase the overall value of the habitat in the region. The compensation proposed by Renac, is certainly insufficient in quality terms, as it does not satisfy the protection of an adequate portion of the habitat that has been delisted.

The coastal salt marsh proposed by Renac fails to be an adequate portion of the Adeguri Marsh to be protected, because it is 3,000 hectare smaller than the affected habitat, and taking into account the guidance provided by the Standard Committee of the Ramsar Convention “there is an inverse relationship between equivalence of the wetland and compensation: the more dissimilar the replacement wetland is, the greater the justification for compensation.”⁴⁶ Which means, that the greater the risks by the loss of the resources provided by the wetland, the compensation should have been numeracally larger.

CONCLUSION AND PRAYER

In light of the above, the Federal States of Aves requests the Honourable Court to adjudge and declare that:

1. Renac has violated international law by culling wild waterbird and dispensing disinfectants to the Adeguri Marsh as responses to the 2014 and 2015 outbreaks of HPAI.
2. Renac has violated international law by delisting the Adeguri Marsh as a Ramsar Site and as a Transboundary Ramsar Site, and by failing to provide adequate compensarion.

⁴⁶ 25th Meeting of the Standing Committee, DOC.SC25-8.

Respectfully Submitted

Agents for the Federal States of Aves