

**Twenty-Second Annual Stetson International Environmental**

**Moot Court Competition**

**2017–2018**

Questions Relating to Responses to Highly Pathogenic Avian Influenza and Transboundary

Wetlands (Federal States of Aves v. Republic of Renac)

International Court of Justice

Memorial by the Republic of Renac

## **STATEMENT OF FACTS**

1. The Adeguri Marsh, a shallow freshwater wetland, is located on the border of The Federal States of Aves and the Republic of Renac.

2. In 2000, Both the Federal States of Aves and the Republic of Renac designated their respective portion of the Adeguri Marsh as a Wetland of International Importance (RAMSAR Site) under the RAMSAR Convention. In 2008, Aves and Renac jointly listed the Adeguri Marsh as a Transboundary RAMSAR Site.

3. In 2009 and 2012, Aves and Renac experienced outbreaks of highly pathogenic avian influenza (H5NX). Although the source was unknown, both outbreaks were localized to the domestic poultry facilities in the area around the Adeguri Marsh. In their efforts to contain the outbreak, Aves and Renac culled hundreds of thousands of domestic chickens.

4. In January 2014, the Republic of Renac experienced an outbreak of highly pathogenic avian influenza in its domestic poultry facilities and waterbirds around the Adeguri Marsh. This outbreak originated in a poultry facility in Aves and was transferred to Renac through cross-infection between domestic poultry and wild waterbirds near the Adeguri Marsh.

5. As a result of this infection, The Republic of Renac had to cull not only its domestic poultry but all the wild waterbirds around its portion of Adeguri Marsh. This resulted in food shortages for the citizens of Renac and their families. In addition, four people in the Republic of Renac were infected with the highly pathogenic avian influenza virus and two died of their infection.

6. In February 2015, shortly after an outbreak of avian influenza in Aves, a severe outbreak of the same strain occurred in Renac. The contamination was determined to have occurred following drainage from Aves's poultry facilities contaminating the wetland and subsequent cross-infection

between waterbirds in and around the Adeguri Marsh and Renac poultry facilities and farms. The outbreak affected several of the large commercial poultry facilities and at least 15 small local farms, as well as likely being responsible for around 250 wild waterbird deaths, including approximately 50 blue-crowned cranes, which tested positive for the avian influenza virus.

7. On 12-14 February, The Republic of Renac, acting in its best national interest, and in accordance to all international Conventions, dispensed disinfectants into the Adeguri Marsh and culled the infected domestic poultry and wild waterbirds as planned. Since action was taken to reduce the spread of the deadly virus, Renac has not experienced another outbreak.

8. On 3 March 2016, Renac notified the Ramsar Convention Secretariat, the Ramsar Contracting Parties, and the Government of Aves that Renac planned to delist the Adeguri Marsh due to urgent national interests in accordance with Ramsar Article 2.5. In the notification, Renac proposed that it would immediately enhance and preserve as a protected area a rural 17,000-hectare coastal salt marsh about 300 miles from the Adeguri Marsh as compensation, in accordance with Ramsar Article 4.2, for delisting the Adeguri Marsh. Renac also suggested that it would consider whether to propose the coastal salt marsh for designation as a Ramsar Site.

9. On 4 October 2016, after following the required process and citing urgent national interests (including, inter alia, the necessity to protect human health, human safety, and Renac's economy from imminent outbreaks of highly pathogenic avian influenza), the Republic of Renac officially delisted the Adeguri Marsh as a Ramsar Site and as a Transboundary Ramsar Site.

10. The Federal States of Aves claim that Renac's response to the 2014 and 2015 outbreaks of highly pathogenic avian influenza, and the subsequent delisting of the Adeguri Marsh as a Ramsar Site violated international law.

11. The Republic of Renac opposes these claims, and seeks an order from the ICJ declaring that 1) the Republic of Renac did not violate international law with respect to its responses to the 2014 and 2015 outbreaks of highly pathogenic avian influenza, and (2) the Republic of Renac did not violate international law by delisting the Adeguri Marsh as a RAMSAR Site and as a Transboundary RAMSAR Site, and the proposed compensation was adequate.

### **LEGAL ISSUES TO DISCUSS**

In the case of the Federal States of Aves v. The Republic of Renac presently before the International Court of Justice, the Defendant will show there is no breach of any environmental international legal obligation under any of the instruments cited by the plaintiff, either to Aves or to any other state.

The defense will emphasize two important points: The first will address the lack of causal link between the behavior attributed to the Republic of Renac and the alleged damage to the Adeguri Marsh. To achieve this, the Defendant will examine all applicable regulation in the context of internationally recognized environmental prerogatives, and corroborate that Renac's actions conform to international legal standards and that there was no damage attributable to said actions. Secondly, the State of Renac will show that under powers granted by certain environmental conventions, the act of removing the Adeguri Marsh from the Ramsar Convention and replacing it with another does not affect or transgress said Convention, demonstrating this way, the lack of international environmental responsibility of the State of Renac.

## SUMMARY OF ARGUMENTS

Before debating the accusations made by the plaintiff, the Defendant must make some precisions that will serve as a structural basis to support its defense. Firstly, it is important to clarify the public health impact of bird flu from doctrinal and medical positions; Secondly, since the issue revolves around a State's international responsibility, it is necessary to establish guidelines regarding what constitutes such responsibility, as well as what it constitutes reasonable cause to accuse a State of being an infringer to international environmental law.

### *Highly Pathogenic Avian Influenza.*

It is worth mentioning, first of all that bird flu has considerable seriousness for both animals and humans, so "The highly pathogenic avian influenza A (H5N1) virus (HPAI) of Asian origin occurs mainly in birds and is highly contagious among them. The H5N1 virus of the highly pathogenic form of avian influenza of Asian origin is particularly deadly among poultry. "<sup>1</sup>”<sup>2</sup>.

The World Organization for Animal Health (OIE), has amongst its objectives, the collection and analysis of scientific information related to the fight against animal diseases and then pass it onto the Member Countries to improve their methods of control and eradication of them. Likewise,

*The OIE develops normative documents relating to rules that Member Countries can use to protect themselves from the introduction of diseases and pathogens, without setting up unjustified sanitary barriers. The main normative works produced by the OIE are: the*

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<sup>1</sup> World Program for the Census of Agriculture, annexes, page 174. World Program for the Agricultural Census 2020. Organización de las Naciones Unidas para la alimentación y la agricultura, Roma, 2016 Capítulo 8, numeral 8.5.9

<sup>2</sup><https://www.cdc.gov/flu/avianflu/h5n1-virus.htm> - Highly Pathogenic Asian Avian Influenza A (H5N1) Virus. (October 14, 2015).

*Terrestrial Animal Health Code, the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals, the Aquatic Animal Health Code and the Manual of Diagnostic Tests for Aquatic Animals*<sup>3</sup>.

When talking about highly pathogenic avian influenza, it: “causes little or no clinical signs in birds and highly pathogenic (HPAI) that can cause severe clinical signs and/or high mortality in birds”<sup>4</sup>. In the present case, the avian influenza in question is included in the list of diseases of the Terrestrial Animal Health Code of the World Organization for Animal Health (OIE)<sup>5</sup>. Therefore, it is important to prevent and control the bird flu as soon as it occurs, in order to be able to establish measures for its prevention. In addition, if you have a history of this disease, you should make the proper preparation and effective control in case an eventual focus occurs.

Aves has had a history of outbreaks of highly pathogenic avian influenza in poultry, since the end of December, 2013. By neglecting control measures, the infection spread through a cross between poultry and wild waterfowl. It is important to mention that if the right thing had been done, the outbreak probably would not have reached the propagation stage. According to the OIE standards, there are monitoring, control and characterization programs for the virus found in wild birds, which will not only give notice of the outbreak, but also an idea of the different migratory routes that

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<sup>3</sup> World Organisation for Animal Health. About us. Objectives. First adoption in 1968; Last update in 2016. Available in URL (<http://www.oie.int/en/about-us/our-missions/>).

<sup>4</sup> World Organisation for Animal Health. Animal Disease Information. General Disease Information Sheets. Avian influenza. Available in URL (<http://www.oie.int/en/for-the-media/animal-diseases/animal-disease-information-summaries/>) and URL ([http://www.oie.int/fileadmin/Home/eng/Media\\_Center/docs/pdf/Disease\\_cards/AI-EN.pdf](http://www.oie.int/fileadmin/Home/eng/Media_Center/docs/pdf/Disease_cards/AI-EN.pdf)).

<sup>5</sup>[http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=chapitre\\_notification.htm](http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=chapitre_notification.htm)- World Organisation for Animal Health. Terrestrial Animal Health Code. Notification Of Diseases, Infections And Infestations, And Provision Of Epidemiological Information, Chapter 1.1.

infected birds can take. Aves, having full knowledge and awareness of OIE standards did not take them into account or even seek advice from the OIE to address the problem. Had they followed its guidelines, Aves would have maintained biosecurity practices in order to prevent the introduction of the virus in their flocks.

The OIE outlines the measures a state needs to take after using “health sacrifice” in order to eradicate an illness. Five of them are, as follows:

*Humane destruction of all infected and exposed animals (OIE Terrestrial Animal Health Code); appropriate disposal of carcasses and all animal products (OIE Terrestrial Animal Health Code); surveillance and tracing of potentially infected or exposed poultry; strict quarantine and controls on movement of poultry and any at-risk vehicles; thorough decontamination of infected premises; a period at least 21 days before restocking<sup>6</sup>.*

In the OIE Terrestrial Animal Health Code, countries that become part of the organization acquire the obligation to notify:

- 1. All highly pathogenic avian influenza viruses, irrespective of their strain, detected in birds (domestic and wild);*
- 2. All low pathogenic viruses of subtypes H5 and H7 detected in poultry.*

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<sup>6</sup> World Organization for Animal Health. Animal Disease Information. General Disease Information Sheets. Avian influenza. Available in URL (<http://www.oie.int/en/for-the-media/animal-diseases/animal-disease-information-summaries/>) and URL ([http://www.oie.int/fileadmin/Home/eng/Media\\_Center/docs/pdf/Disease\\_cards/AI-EN.pdf](http://www.oie.int/fileadmin/Home/eng/Media_Center/docs/pdf/Disease_cards/AI-EN.pdf)).

3. *Unusual mortality among wild birds should also be reported to the OIE through its World Animal Health Information System (WAHIS)*<sup>7</sup>.

Similarly in the Health Code for terrestrial animals in Chapter 1.1. Regarding the notification of diseases, infections and infestations, and presentation of epidemiological data,

*Member Countries shall make available to other Member Countries, through the OIE, whatever information is necessary to minimise the spread of important animal diseases, and their pathogenic agents, and to assist in achieving better worldwide control of these diseases*<sup>8</sup>.

Aves should have notified the OIE in 2013, right after the first outbreak. They did not, and as a result of their lack of diligence, the OIE did not provide them with the necessary help for the control of the Highly Pathogenic Avian Influenza virus, and by means of the organization or by the member countries.

The spread of the Highly Pathogenic Avian Influenza virus could have been controlled by Aves, by following the guidelines of the World Organization for Animal Health. Being a member country, Aves could have sought advice relating diseases, infections and infestations, of all kinds in veterinary matters. More importantly, Aves would have received not only advice but help from

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<sup>7</sup> World Organisation for Animal Health. Avian Influenza Portal. Prevention & control. First adoption in 1968; Last update in 2016. Available in URL (<http://www.oie.int/en/animal-health-in-the-world/web-portal-on-avian-influenza/early-detection-warning-diagnostic-confirmation/>).

<sup>8</sup> World Organisation for Animal Health. Terrestrial Animal Health Code. Notification Of Diseases, Infections and Infestations, and Provision of Epidemiological Information. Chapter 1.1. Article 1.1.2. First adoption in 1968; Last update in 2016. Available in URL ([http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=chapitre\\_notification.htm](http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=chapitre_notification.htm)).



other States in which the outbreak may have been presented, which previously gave notice to the organization, leaving the record of it.

Regarding the environmental impact of bird flu, it not only addresses the disease as such, but "It is important to stress that avian influenza includes many disciplines and subdomains such as: disease analysis, prevention, outbreak, animal health and human health, veterinary sciences, virology, production, markets, aid, politics, relations with the United Nations system for a common strategy against influenza, etc."<sup>9</sup>. So in addition to the damage it can cause, there must be an interdisciplinary program to mitigate the impact of said disease; It should be noted that these programs must be promoted through environmental policies of the territories in which they are presented.

Avian influenza also implies responsibilities for a State or Nation in which it spreads, thus, the FAO determines that within the actions of a State there must be: (1) the surveillance of human and animal influenza, (2) early warning systems, (3) diagnostic detection, (4) notification systems and (5) applied research through the appropriate north-south and south-south networks at our disposal<sup>10</sup>.

#### *International State Responsibility.*

In order to determine the configuration of the international responsibility of a given State, there must be parameters that allow the notion of such responsibility to be established, therefore, it is mentioned that:

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<sup>9</sup> <http://www.fao.org/faoterm/collection/avian-influenza/en/> - FAO. Avian Influenza. (2017).

<sup>10</sup> [http://www.fao.org/docs/eims/upload/218691/declaration\\_bamako\\_dec06\\_en.pdf](http://www.fao.org/docs/eims/upload/218691/declaration_bamako_dec06_en.pdf). – Bamako Declaration - 6-8 December 2006, Bamako.

*State responsibility for internationally wrongful acts (AG / 56/83)*

*Article 2: Elements of the internationally wrongful act of the State*

*There is an internationally wrongful act of the State when a behavior consisting of an act or omission:*

- a) *It is attributable to the State under international law; and*
- b) *Constitutes a violation of an international obligation of the State<sup>11</sup>*

An internationally wrongful act occurs when a State violates international law. In addition to this, the wronged State must show damages caused by conduct attributable to a State must be demonstrated, and that in view of the foregoing, there is a causal link that determines the action or omission attributable to a State in the face of damage, and consequently, the transgression of international law.

**As to the first Claim.**

The State of Aves claims that the use of chlorine in the Adeguri Marsh by the Republic of Renac, in order to stop the outbreak of highly pathogenic avian influenza transgresses a series of international instruments.

Aves, being a developed country, with a per capita GDP of US \$ 17,500, exceeding Renac's by more than 10 times, should have taken the steps from paragraph 2 of Article 3 of the Ramsar Convention, specifically, informing Renac of the effects on the wetland as a consequence of the contamination, produced by the inadequate management and control of the virus. In spite of this,

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<sup>11</sup>N.U. Asamblea General de las Naciones Unidas. Responsabilidad del Estado por hechos internacionalmente ilícitos (AG/56/83). <https://www.dipublico.org/4076/responsabilidad-del-estado-por-hechos-internacionalmente-ilicitos-ag5683>

Aves does not take relevant measures to face the environmental crisis that arises and Renac must solve it subject to its own possibilities. In addition, Aves showed lack of diligence during February 2015 outbreak, by performing a drain of poultry facilities, which polluted the wetland and subsequently infected Renac and its poultry facilities.

It is evident that Aves did not take not enough actions to mitigate or stop the effects of the outbreak, causing the virus to disperse and reach Renac, killing almost 25% of the blue crown cranes. Renac's measures prevented the virus from dispersing into more birds and reaching humans, avoiding a pandemic, especially after finding several people had been infected, some even died from said pathogen.

It is also worth pointing out that the State of Aves had in the first place the international environmental responsibility to control this outbreak. This was to be achieved by cleaning and draining their pens, limiting a new spread of the virus in Aves. Aves's uncontrolled activity caused the drainage to reach the Aderguri Marsh, causing a second infection of highly pathogenic avian influenza to the Republic of Renac, the international environmental responsibility of birds, is configured by transgressing Article 3 of the agreement on the conservation of Eurasian African migratory birds (AEWA)<sup>12</sup>, which states that the States Parties must adopt the necessary measures to conserve migratory birds, in which case the state of Aves did not take security measures at the moment in which it decided to drain the wastes from its pens to the wetland; as expressed in literal (f) of numeral (2) of the same third article of this agreement: the states parties "shall cooperate in emergency situations that require concerted international action and in the identification of

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<sup>12</sup> Agreement on the Conservation of Afro-Eurasian Migratory Waterbirds. General conservation measures. Article III of 1995.

migratory waterbird species that are more vulnerable to these situations, and will also cooperate to develop adequate emergency procedures to provide wider protection to these species in such situations and to develop guidelines to support each of the Parties to deal with these situations; that were not contributed by the state of Aves.

Aves also violated applicable OIE regulations, such as monitoring, control and characterization programs of the virus found in wild birds, to not only give recognition of the disease , but also a notion of the different migratory routes that these can take. Aves did not seek advice from the OIE in order to address the problem of repeated outbreaks of avian influenza, therefore neglecting biosecurity practices in order to prevent the introduction of the virus in their flocks.

Simultaneously, international agreements such as the one related to wetlands were disregarded by Aves as the virus spread uncontrollably in their territory, violating the guidelines set out in the RAMSAR convention<sup>13</sup> inasmuch as Aves did not take necessary measures for the conservation of the wetland and its species. When the "sanitary sacrifice" measure is used to eradicate a highly pathogenic virus, it is necessary for the state to take further measures. The most important ones are the monitoring and trace the birds that may possibly be affected, and the complete decontamination of the sites where the disease occurred. In the present case, the Federal States of Aves used the sanitary sacrifice measure without the follow up measures.

Taking into account that influenza "is a highly contagious disease, with poultry as its main host, and (...) The incubation period of Highly Pathogenic Avian Influenza is 21 days." the actions of a State must be carried out in a timely and effective manner, to guarantee in this way the preservation

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<sup>13</sup> Ramsar Convention - *Wetlands of International Importance especially as Waterfowl Habitat.*

of public health and economic stability<sup>14</sup>. Renac's behavior was adequate, encouraged and allowed by international law under article 14, literals (a) and (d) and (e) of the Convention for Biological Diversity<sup>15</sup>, the article "Responding to the avian influenza pandemic threat", published by the World Health Organization in 2005<sup>16</sup>, the Addressing avian influenza A(H7N9), Risk management along the food chain guide of the Food and Agriculture Organization of the United Nations of 2013<sup>17</sup>, the Addressing avian influenza A(H7N9), Guidelines for emergency risk-based surveillance, Food and Agriculture Organization of the United Nations of 2013<sup>18</sup>, the Biosecurity for Highly Pathogenic Avian Influenza, Food and Agriculture Organization of the United Nations of 2008<sup>19</sup>, the Biosecurity guide for live poultry markets, Food and Agriculture Organization of

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<sup>14</sup> Some examples of the uncontrolled outbreak are:

*"La primera vez que se comprobó que la IA (H5N1), produjo muertes humanas, fue en 1997 en Hong Kong, repitiéndose en años sucesivos. Durante el último simposio de IA se presentaron los resultados obtenidos después de analizar muestras de cadáveres de personas fallecidas durante la pandemia de gripe española de 1918; se sugiere que la misma fue producida por un virus de origen aviar (...) Las pérdidas económicas por IA han variado dependiendo de la cepa viral, especie del ave infectada, número de granjas involucradas, métodos de control usados y rapidez de implementación del control o estrategias de erradicación. Las cifras, por ejemplo, varían desde 1 millón de dólares durante 1924-1925 en US a 63 millones en 1983-84 también en US y en el brote de Italia de 1999-2000 las pérdidas indirectas fueron de 500 millones de dólares". Buscaglia, C. Influenza aviar, Revista In vet, 2004.*

<sup>15</sup> <https://www.cbd.int/convention/articles/default.shtml?a=cbd-14> - Convention on Biological Diversity. Impact Assessment and Minimizing Adverse Impacts, Article 14.

<sup>16</sup> [http://www.who.int/influenza/resources/documents/h5n1\\_strategic\\_actions/en/](http://www.who.int/influenza/resources/documents/h5n1_strategic_actions/en/) - World Health Organization, Responding to the avian influenza pandemic threat, Recommended strategic actions (2005).

<sup>17</sup> Addressing avian influenza A(H7N9), Risk management along the food chain, Food and Agriculture Organization of the United Nations of 2013

<sup>18</sup> Addressing avian influenza A(H7N9), Guidelines for emergency risk-based surveillance, Food and Agriculture Organization of the United Nations of 2013

<sup>19</sup> Biosecurity for Highly Pathogenic Avian Influenza, Food and Agriculture Organization of the United Nations of 2008.

the United Nations of 2008<sup>20</sup> and the Terrestrial Animal Health Code, World Organization for Animal Health of 2017<sup>21</sup>.

It wasn't until Renac took action to stop the outbreak of the highly pathogenic influenza that Aves initiated a control and monitoring of the wetland in order to determine specific damages to the ecosystem and to the Adeguri Marsh in general. This assessment, carried out by the plaintiff state, determined that there was no decrease in the quality of the water in the Adeguri Marsh, and the only quantifiable loss in wildlife was the reduction of the blue-crowned bird species as a result of the spread of the virus.

It is for all the above reasons that the State of Renac must be justified in their cleaning of the Marsh with disinfectant and having to sacrifice not only its commercial poultry<sup>22</sup> and wildlife, but the remaining 450 infected blue crowned cranes that were in and around their portion of the Adeguri Marsh, to prevent the damage from continuing and affecting their status. It is important to note that the blue-crowned cranes are not part of the scope of protection of the agreement on the conservation of Eurasian African migratory birds (AEWA).

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<sup>20</sup> <http://www.fao.org/documents/card/en/c/5a3c4d30-efd1-47f2-a805-589676cacfef/> - Biosecurity guide for live poultry markets, Food and Agriculture Organization of the United Nations of 2008.

<sup>21</sup> Terrestrial Animal Health Code, World Organization for Animal Health, 2017.

<sup>22</sup> Por "especie domesticada o cultivada" se entiende una especie en cuyo proceso de evolución han influido los seres humanos para satisfacer sus propias necesidades.-convenio sobre la diversidad biológica, Naciones unidas. Artículo 2° de 1992./ By "domesticated or cultivated species" is meant a species in the process of evolution have influenced human beings to meet their own needs .- agreement on biological diversity, United Nations. Article 2 of 1992.

Convention on Wetlands of International Importance as Waterfowl Habitat.

"domesticated or cultivated species" is a species in whose evolution process human beings have influenced to satisfy their own needs. Convention on biological diversity, United Nations 1992

### **As to the second claim**

The second claim made by Aves, consisted in the transgression of the RAMSAR Convention, by removing part of the Adeguri Marsh wetland from said Convention. Regarding this claim, the Defendant will corroborate that removing Adeguri Marsh from RAMSAR, does not violate said convention, and that consequently, the measures taken by Renac conform to international environmental law.

Renac complied with all the formalities in the wetland removal procedure, having analyzed all the possibilities and consequences prior to the decision, outlining fundamental State reasons of national interest. Following this, the state of Renac, made sure that the methods used to stop the spread of the virus in the wetland had no damaging environmental consequences. Finally, Renac sent a statement to "Ramsar Bureau" to inform them about the respective changes of borders as soon as possible, as required by Ramsar Article 2.5.4.3.1. Urgent National Interest.

#### *4.3.1. Urgent National Interest*

The General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation, adopted by Resolution VIII.20 (2002) of the Ramsar Convention, outlines standards that a Contracting Party needs to consider in their interpretation of Articles 2.5 and 4.2. As the Defendant will show, the general guidelines were taken into account and it was determined that the situation faced by Renac, as a result of Aves’s lack of diligence in preventing the outbreak constituted an urgent national interest.

*Urgent National Interest:*<sup>23</sup>

*3. When invoking its right under Article 2.5 to delete from or restrict the boundaries of wetlands included in the List of Wetlands of International Importance (Ramsar sites) in the case of urgent national interests, a Contracting Party may take into account, inter alia:*<sup>24</sup>

*“3.1 the national benefits of maintaining the integrity of the wetlands system and its related benefits*<sup>25</sup>;

Removing a wetland from the List of Wetlands of International Importance (RAMSAR sites) does not mean that it will be unprotected. To the contrary, the aim of Renac is to preserve and conserve the water quality, as well as all wildlife that benefits from the Adeguri Marsh. By removing the Adeguri Marsh from the list of RAMSAR protected sites, Renac will have more freedom to decide over its portion of the ecosystem, benefiting its wetlands and contributing to the mitigation of climate change.

*3.2 whether maintaining the status quo threatens a national interest*<sup>26</sup>;

Regarding the status quo, the health of the population of the republic of Renac is compromised because the living conditions of the ecosystem of the Adeguri Marsh enable and in fact host highly contagious avian influenza, conditions that we are forced to disfavor to avoid future outbreaks. Additionally, keeping the wetland as a protected area affects the economic interests of the residents

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<sup>23</sup>Convention on Ramsar Wetlands, Iran, 1971. 8th. Meeting of the Conference of the Contracting Parties. Article 3 - General orientation to interpret the expression "urgent reasons of national interest" in article 2.5 of the Convention and to consider the compensation provided in article 4.2. November 26, 2002

<sup>24</sup> Ibidem.

<sup>25</sup> Ibidem 23

<sup>26</sup> Ibidem 23



of the Republic of Renac who benefit from poultry raising farms located in areas near the Adeguri Marsh.

*3.3 whether the proposed change is consistent with national policies <sup>27</sup>;*

Renac, like most developing countries, must establish priorities and strategies for economic growth and human welfare. Delisting the Adeguri Marsh from the RAMSAR Convention is consistent with Renac's economic and public health policies.

*3.4 whether the immediate action is required to avert a significant threat <sup>28</sup>;*

In the face of a significant threat, quick action is always the clear course. The constant outbreaks emanating from the Adeguri Marsh that resulted in the deaths of residents of the republic of Renac, constitute a significant threat not only for our country, but raises the need to avoid a global pandemic of bird flu.

*3.5 whether a national interest is being increasingly threatened<sup>29</sup>;*

The population of Renac relies heavily on the economic benefits of the Adeguri Marsh. Measures to adequately and rapidly protect, must be taken quickly and effectively. Due to the prudence that this protection demands in relation to the disinfection of the site, the risk of an economic, health and nutritional crisis grows every day that the disease can spread if action is not taken.

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<sup>27</sup> Ibidem 23

<sup>28</sup> Ibidem 23

<sup>29</sup> Ibidem 23

#### 4.3.2. Replacing the Adeguri Marsh with another wetland.

Bearing in mind that the Adeguri Marsh is a transboundary wetland, which includes the territory of Renac and Aves, the Defendant wishes to clarify that the part to be withdrawn from the Ramsar Convention is the one belonging to Renac, without prejudice to the decisions adopted by Aves its part of this natural resource.

In response to the urgent national interest and threats against the State of Renac that were previously cited, it is not only necessary but urgent to remove the wetland from the aforementioned convention, since it seeks to preserve both Renac's national security and the protection of the part of the Adeguri Marsh wetland.

Article 4.2 of the Ramsar Convention, mentions:

*“Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources”<sup>30</sup>*

Article 4.2, sets obligations for the State that wishes to withdraw or reduce the limits of protection of a wetland. National interests must exist and be verified, and the international obligation to compensate arises, creating new natural reserves for the birds that live within the wetland.

In view of the foregoing and as previously stated, there is a national interest to reduce or remove a wetland, by checking the needs and extreme measures that Renac needs to adopt to guarantee its national interest. Renac’s actions do not violate or transgress international environmental law, as it is simply exercising its right of sovereignty by withdrawing its part of Adeguri Marsh. Renac

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<sup>30</sup> Convention on Wetlands of International Importance, especially as Waterfowl Habitat. Ramsar. Article 4.2. 1971.

is also fulfilling its obligation to compensate for said withdrawal, by offering a 17,000-acre coastal salt marsh, and proposing that this salt marsh be designated as a Ramsar site.

Regarding the health and conservation of wild birds and other species in the Adeguri Marsh, the provisions of AEWA<sup>31</sup> and CBD<sup>32</sup> remain in place, ensuring the proper international protection for this important natural resource.

The Convention on Wetlands of International Importance, especially as waterfowl habitat, Article 2.2 states that "The selection of wetlands that are included in the List should be based on their international importance in ecological, botanical, zoological, limnologic terms or hydrological"<sup>33</sup>.

On March 3, 2016, Renac notified the RAMSAR Secretariat, that prior to suppressing the Adeguri Marsh because of the urgent national interest according to article 2.5 of RAMSAR, it would to preserve a protected area of 17,000 hectares of coastal marshes about 300 miles, as compensation.

This area constitutes more than adequate compensation under article 4.2.

The Convention on Wetlands of International Importance especially as Waterfowl Habitat, states: "The designation & management of RAMSAR SITES". If your site is found to meet at least one criterion of the nine for RAMSAR Site designation (Step D1) and the designation is supported by local stakeholders through the community consultations, then OL, the RAMSAR Authority can begin the formal designation process; with participation of all relevant stakeholders. Ideally, some form of committee or working group (Step M2.1) should be formed for this purpose<sup>34</sup>.

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<sup>31</sup> Agreement on the Conservation of Afro-Eurasian Migratory Waterbirds. General conservation measures. 1995.

<sup>32</sup> Agreement on biological diversity, United Nations. 1992.

<sup>33</sup> Convention on Wetlands of International Importance, especially as Waterfowl Habitat. Ramsar. Article 2.2. 1971.

<sup>34</sup> The Designation and Management of Ramsar Sites – A practitioner’s guide.– East Asia. D3. Site designation (2017).

Bearing in mind the above, the convention mentions that the wetland that meets at least one of the criteria for the Identification of Wetlands of International Importance may be designated by the relevant national authority for inclusion in the RAMSAR list, where it will undergo a study to determine its possible entry to the list of wetlands.

In the present case, the coastal marsh proposed by Renac as compensation for delisting the Adeguri Marsh, meets criterion 3<sup>35</sup>: “A wetland should be considered internationally important if it supports populations of plant and/or animal species important for maintaining the biological diversity of a particular biogeographic region”. The coastal salt marsh proposed by Renac is the home to thousands of plant and animal species that are vital to a healthy ecosystem. Therefore, it may be possible for the new protected area to be included as a RAMSAR site.

In addition to the previously stated criteria, Ramsar must take into account the following numerals in order to defend the compensation made by Renac: **3.6** *all reasonable alternatives to the proposed action, including the “without project” option, finding an alternative location, introducing buffer zones, etc*<sup>36</sup>.

The proposed "without project" action refers to a probable future situation, such as the withdrawal of the Adeguri Marsh from the List of Wetlands of International Importance (Ramsar Sites), introducing the 17,000 hectares salt marsh as an alternative compensation solution.

**3.7** *the existing functions and economic, social and ecological values of the site in question. (The more important the site's values and functions, the higher should be the social, economic, or*

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<sup>35</sup> Convention on Ramsar Wetlands, Iran, 1971. 8th. Meeting of the Conference of the Contracting Parties. Article 3 - General orientation to interpret the expression "urgent reasons of national interest" in article 2.5 of the Convention and to consider the compensation provided in article 4.2. November 26, 2002

<sup>36</sup> Ibidem

*ecological benefits of the proposed project.); 3. whether the proposed action provides benefits to a large base of recipients;; 3.10 whether, over the long term, the proposed action offers greater benefits<sup>37</sup>:*

Inclusion in the List of Wetlands of International Importance (Ramsar sites) of the Coastal Salt Marsh provides a considerable measure of economic, social and ecological value to the Republic of Renac, since it protects integrity of all its citizens; on the one hand, those that engage in poultry trade by eliminating the danger of a new outbreak; secondly the ecological interest of protecting the other wild birds that arrive at this site; taking into account that the delisting of the Aderguri Marsh List of Wetlands of International Importance should not be assumed negatively, since the republic of Renac will continue working for the conservation of its ecosystem.

The Coastal Salt Marsh, spanning 17,000 hectares, with great diversity of waterfowl and other wild animals, has the capacity not only to provide ecological stability to the Republic of Renac, but guarantee the protection of a large swath of natural resources, which will have long term benefits for Aves and the region.

## **CONCLUSIONS:**

International environmental law seeks to create awareness within the international community, through international instruments that serve as support and guarantee of international prerogatives, in search of environmental preservation. For such purposes, there are international agreements that

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<sup>37</sup> Ibidem 35

allow the creation of a binding force with respect to the treaties before the States that decide to accept them.

International environmental responsibility begins the moment a State transgresses a binding international instrument, causing damage to another State a result of an action or omission.

Regarding the first claim, “that the Republic of Renac violated international law with respect to its responses to the 2014 and 2015 outbreaks of highly pathogenic avian influenza, Renac has no international responsibility to Aves, since, as it was pointed out in the facts, there is no damage attributable to the act of using a disinfectant, since that it was not possible to verify in a safe way, that said disinfectants could cause damage to both the wetland and the animals that inhabit it.

There are a series of norms and principles that seek to support the principle of sovereignty of a State. It is evident that the urgent national interest carries a serious threat to the country, reason why, the affected State must take necessary measures to be able to avoid the propagation of the damage. In the present case, Renac was suffering an economic social affectation because of Aves’s lack of diligence in preventing the spread of the disease, and it look measures to limit the damage. These measures, far from creating unsafe conditions, saved the Adeguri Marsh ecosystem, giving way to a healthier population of all local and migratory bird species.

Regarding the second claim “that 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” there is no responsibility attributable to the State of Renac, because the compensation measures mentioned above, meet the criteria established by RAMSAR, in addition, there is no transgression to the animals that live within said wetland , since there are other international instruments that protect them.

For all the above, there is no responsibility for the State of Renac, since the actions that were developed were adapted to the prerogatives of international environmental law; Firstly, because the existence of damage was not demonstrated by the use of disinfectants, it is worth mentioning that Aves did violate international environmental regulations, because it did not take the necessary and relevant measures to prevent the spread of bird flu; Secondly, and in keeping with the principle of sovereignty, Renac followed the international instruments to be able to take its portion of wetland from RAMSAR.

In view of the foregoing, the defendant seeks an order from the ICJ declaring that 1) the Republic of Renac did not violate international law with respect to its responses to the 2014 and 2015 outbreaks of highly pathogenic avian influenza, and (2) the Republic of Renac did not violate international law by delisting the Adeguri Marsh as a RAMSAR Site and as a Transboundary RAMSAR Site, and the proposed compensation was adequate.

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