

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

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

THE FEDERAL STATES OF AVES
Applicant

v.

THE REPUBLIC OF RENAC
Respondent

MEMORIAL FOR THE APPLICANT

**THE 22ND ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL
MOOT COURT COMPETITION 2017-2018**

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STATEMENT OF JURISDICTION

The Federal States of Aves (“Aves”) and the Republic of Renac (“Renac”) have submitted to the International Court of Justice (“ICJ”) questions relating to responses to highly pathogenic avian influenza and transboundary wetlands. Aves and Renac have transmitted their Special Agreement to the Registrar of the ICJ. Therefore, Aves and Renac have submitted to the jurisdiction of the ICJ in accordance with Art. 36(1) of the Statute.

QUESTIONS PRESENTED

I.

WHETHER RENAC VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS
RESPONSES TO THE 2014 AND 2015 OUTBREAKS OF HIGHLY PATHOGENIC
AVIAN INFLUENZA

II.

WHETHER RENAC VIOLATED INTERNATIONAL LAW BY DELISTING THE
MARSH AS A RAMSAR SITE AND AS A TRANSBOUNDARY RAMSAR SITE,
AND WHETHER THE PROPOSED COMPENSATION WAS ADEQUATE

STATEMENT OF FACTS

The Federal States of Aves (“Aves”) and the Republic of Renac (“Renac”) are neighboring countries(R¶1). They share a 20,000-hectare transboundary wetland called the Adeguri Marsh (“Marsh”), with approximately half of the Marsh is located in each state(R¶9). Both states rely on poultry production to support their economies. Aves is a recently developed country and Renac is a developing country(R¶1).

The Marsh was listed a Transboundary Wetland of International Importance (“Ramsar Site”) in 2008, and has since been cooperatively managed by Aves and Renac(R¶9). The Marsh teems with biodiversity, and houses a significant number of fish and migratory waterbirds(R¶11). Among these animals is the endangered blue-crowned crane, which winters in the Marsh(R¶13) and is of particular cultural significance in Aves(R¶14). Only around 2,250 cranes remain in the wild(R¶13).

In 2009 and 2012, there were two outbreaks of highly pathogenic avian influenza (“HPAI”) in both countries which were localized in domestic poultry facilities and successfully contained(R¶15). In 2013, another HPAI outbreak impacted large-scale poultry facilities and small-scale farms in Renac(R¶16). In response, Renac culled many hundreds of migratory waterfowl, despite persistent protests from Aves. A total of 450 blue-crowned cranes were culled in the process(R¶19). A year later, another outbreak occurred in Renac(R¶20) and the process of culling domestic poultry and vulnerable wild birds was repeated(R¶24). In addition, Renac dispensed 300,000 liters of strong chlorine solution into the Marsh(R¶24;C¶46). Renac again ignored objections raised by Aves regarding its methods of addressing the outbreak(R¶24), including warnings that its

response would violate international law(R¶22). Following Renac’s actions, the average number of wild waterbirds in the wetland have plunged by a third(R¶25).

Subsequently, Renac informed Aves about its plan to delist the Marsh as a transboundary Ramsar Site(R¶27). Renac desired to alter the Marsh by installing bird scarers, and draining and filling portions of the wetland near farms in its territory(R¶26;C¶55). Despite repeated objections from Aves(R¶¶¶27,30,32) and other Parties(R¶27), Renac delisted the Marsh(R¶34).

Aves seeks an order from the International Court of Justice (“ICJ”) to declare that Renac’s response to the HPAI outbreaks and its delisting of the Marsh violated international law(R¶36).

SUMMARY OF THE ARGUMENTS

I.

Renac breached Ramsar, the CBD, the CMS and the AEWA by culling vulnerable migratory birds, including the endangered blue-crowned crane, and dispensing disinfectants into the Marsh. Renac's actions did not constitute wise use of the Marsh and did not promote conservation of the ecosystem, contrary to its international obligations. Renac also breached customary international law, particularly the precautionary principle and the duty not to cause transboundary harm.

II.

Renac violated its obligations under the Ramsar and the CBD by its unilateral delisting of the Marsh without proper consultation with Aves, by failing to provide adequate compensation therefor, and by renegeing on its duties of international cooperation.

ARGUMENTS

I. RENAC’S RESPONSE TO THE HPAI OUTBREAKS VIOLATED INTERNATIONAL LAW.

A. Renac violated its treaty obligations.

1. Renac violated its duty to promote the conservation and wise use of the Marsh, as mandated by Article 3 of Ramsar.

The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (“Ramsar”) obligates Parties to promote the conservation and wise use of wetlands in their territory.¹ *Wise use* is the maintenance of a wetland’s ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development.²

Renac failed to promote wise use of the wetland when it chose to cull the wild waterbirds³ and dispense disinfectants⁴ into the Marsh. The destruction of waterbirds and

¹ Convention on Wetlands of International Importance especially as Waterfowl Habitat art. 3, ¶ 1, Feb. 2, 1971, 996 U.N.T.S. 245 [hereinafter Ramsar].

² 9th Meeting of the Conference of Parties to the Convention of Wetlands, *Resolution IX.1 Annex A: A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character*, RAMSAR 6, ¶ 22 (2005) http://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_ix_01_annexa_e.pdf [hereinafter Ramsar Resolution IX.1].

³ R. ¶¶ 19, 24.

⁴ R. ¶ 24.

their habitats is not wise use as required by Ramsar.⁵ Lethal responses are inappropriate to deal with outbreaks;⁶ culling is "neither advisable nor justifiable"⁷ and further aggravates the situation by resulting in greater dispersal of birds.⁸

i. Culling negatively altered the ecological character of the Marsh.

A change in the ecological character of the wetland is a human-induced adverse alteration of any ecosystem component, process, and/or benefit or service.⁹ The non-living environment of the wetland comprises its *ecosystem components*, while its interactions

⁵ 10th Meeting of the Conference of Parties to the Convention of Wetlands, *Resolution X.21: Guidance on responding to the continued spread of highly pathogenic avian influenza*, RAMSAR 1, ¶ 4 (2008) http://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_x_21_e.pdf [hereinafter Ramsar Resolution X.21].

⁶ 9th Meeting of the Conference of Parties to the Convention of Wetlands, *Resolution IX.23: Highly pathogenic avian influenza and its consequences for wetland and waterbird conservation and wise use*, RAMSAR 3, ¶ 18 (2005) http://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_ix_23_e.pdf [hereinafter Ramsar Resolution IX.23].

⁷ Nature and Biodiversity Unit of DG Environment, *Information Note on Avian Influenza and Migratory Birds*, EUROPEAN COMMISSION 4 (2006) http://ec.europa.eu/environment/nature/conservation/wildbirds/birdflue/docs/info_on_avian_influenza.pdf.

⁸ Scientific Task Force on Avian Influenza and Wild Birds, *H5N8 Highly Pathogenic Avian Influenza (HPA I) in poultry and wild birds*, COP12 NEW ROOM 4, http://www.cms.int/sites/default/files/Scientific%20Task%20Force%20on%20Avian%20Influenza%20and%20Wild%20Birds%20H5N8%20HPAI_December%202016_FINAL.pdf.

⁹ Ramsar Resolution IX.1, *supra* note 2, at 5, ¶ 15.

with the complex living communities within it are termed *ecosystem processes*.¹⁰ *Ecosystem services*, on the other hand, are the benefits wetlands produce for people.¹¹

Renac negatively altered the ecological character of the Marsh by culling vulnerable waterbirds. Migratory birds play a vital role in regulating the ecosystem;¹² they are crucial in pest regulation,¹³ seed dispersal,¹⁴ and pollination.¹⁵ Indeed, migratory birds are vital to the survival of many other species which rely on the Marsh.¹⁶ By wantonly culling the birds, Renac not only endangered the survival of these vulnerable species; it also harmed other organisms which depend on the Marsh for survival.

¹⁰ *Id.* at 1-2, ¶ 6.

¹¹ *Id.*

¹² Mehmet Tabur, 2010, 'Ecological Importance of Birds', paper presented to the Second International Symposium on Sustainable Development, June 8-9 2010, Sarajevo Viewed 17 November 2017 http://eprints.ibu.edu.ba/601/1/issd2010_science_book_p560-p565.pdf

¹³ UNEP/CMS Secretariat, et. al., *Migratory Birds in the Economy*, WORLD MIGRATORY BIRD DAY http://www.worldmigratorybirdday.org/2012/index3e92.html?option=com_content&view=article&id=54&Itemid=37 (last visited Nov. 11, 2017).

¹⁴ FAO, *FAO Statement on World Migratory Bird Day - Importance of Migratory Bird*, FAO'S ANIMAL PRODUCTION AND HEALTH http://www.fao.org/ag/againfo/programmes/en/empres/news_140512.html (last visited Nov 17, 2017).

¹⁵ CJ Whelan, *Ecosystem services provided by birds*. Ann N Y Acad Sci. 2008, at 25

¹⁶ R. ¶¶ 11, 12.

ii. Dumping disinfectants jeopardized the sustainable development of the Marsh.

Wise use must be achieved within the context of *sustainable development*.¹⁷ Sustainable development is the management of a natural resource in such a manner that it may yield the greatest benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations.¹⁸

Chlorine is already a powerful disinfectant at low concentrations.¹⁹ Dumping 300,000 liters of highly-concentrated chlorine²⁰ into the wetland has a detrimental effect on both present and future users of the Marsh, as chlorine harms various aquatic organisms and causes acute toxicity to microorganisms and fish.²¹ At the same time, chlorination produces trihalomethane compounds such as chloroform (CH₃CL), which is carcinogenic.²² Clearly, dumping bleach into the Marsh does not constitute wise use of the wetland, as it endangered present users and adversely impacted the Marsh's ability to support future generations.

¹⁷ Ramsar Resolution IX.1, *supra* note 2, at 6, ¶ 22.

¹⁸ World Commission on Environment and Development. *Our Common Future: Report of the World Commission on Environment and Development*, UNITED NATIONS ¶II(1) <http://www.un-documents.net/ocf-02.htm> (last visited Nov. 17, 2017).

¹⁹ Miklas Scholz, *Wetlands for Water Pollution Control*, 135 (2015).

²⁰ C. ¶ 46.

²¹ Robert H. Kadlec, *Treatment Wetlands*, 483 (1995).

²² Miklas Scholz, *supra* note 19, at 136.

2. Renac breached its obligation to conserve migratory waterfowl, particularly the vulnerable blue-crowned crane, under Ramsar, CMS, AEWA, and CBD.

Article 4 of Ramsar mandates Parties to promote the conservation of waterfowl²³ and to increase waterfowl populations on wetlands.²⁴ The CMS also stresses that Parties must conserve²⁵ and restore²⁶ endangered migratory species to a favorable conservation status. Renac breached its obligations under these agreements by indiscriminately eliminating wild birds in the Marsh.

i. Culling drastically reduced the waterfowl population in the wetland.

Prior to the emergence of HPAI in the Marsh, only 2,250 blue-crowned cranes remained in the wild.²⁷ The crane is listed as endangered on the IUCN Red List of Threatened Species,²⁸ which means that it is facing “a very high risk of extinction” in the

²³ Ramsar, *supra* note 1, art. 4, ¶ 1.

²⁴ Ramsar, *supra* note 1, art. 4, ¶ 4

²⁵ Convention on the Conservation of Migratory Species of Wild Animals, art. III ¶ 4, June 23, 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

²⁶ *Id.* at art. V, ¶ 1.

²⁷ R. ¶ 13.

²⁸ *Id.*

near future.²⁹

In 2014, around 450 blue-crowned cranes were culled by Renac.³⁰ An additional 100 blue-crowned cranes were killed by Renac barely twelve months later.³¹ Renac thus decimated the endangered blue-crowned crane population by approximately 24%³² in a span of just a year, despite its obligation to restore the species to a more favorable status.

ii. Culling was not justified under the CMS.

The Convention on Migratory Species (“CMS”) prohibits the *taking*³³ of vulnerable listed species³⁴ like the blue-crowned crane.³⁵ The CMS defines *taking* as hunting, fishing, capturing, harassing, deliberate killing or attempting to engage in any such conduct.³⁶ Exceptions may be made to this prohibition only if: (1) the taking is for scientific purposes;³⁷ (2) the taking is for the purpose of enhancing the propagation or survival of the affected species;³⁸ (3) the taking is to accommodate the needs of traditional subsistence

²⁹ Int’l Union for Conservation of Nature and Nat. Res., *Categories and Criteria*, THE IUCN RED LIST OF THREATENED SPECIES, http://www.iucnredlist.org/static/categories_criteria_2_3 (Last visited Nov. 13, 2017).

³⁰ R. ¶ 17.

³¹ R. ¶ 24.

³² R. ¶ 13.

³³ CMS, *supra* note 25, art. III, ¶ 5.

³⁴ CMS, *supra* note 25, art. III, ¶ 1.

³⁵ R. ¶ 13.

³⁶ CMS, *supra* note 25, art. I ¶ 1(j).

³⁷ CMS, *supra* note 25, art. III, ¶ 5(a).

³⁸ CMS, *supra* note 25, art. III, ¶ 5(b).

users;³⁹ or (4) extraordinary circumstances so require.⁴⁰ The CMS provides further that the taking must be precise as to content and limited in space and time for any of the aforesaid exceptions to apply.⁴¹ Most importantly, such taking *should not operate to the disadvantage* of the species.⁴²

Renac's actions did not fall within any of the first three exceptions, as Renac merely culled the birds out of an unsupported⁴³ fear that they would spread the virus.⁴⁴ Contrary to Renac's misguided belief, however, all currently known human cases of HPAI infection have resulted from frequent and intimate contact with poultry,⁴⁵ and none through contact with wild birds.⁴⁶

Neither is the culling justified as the result of "extraordinary circumstances". The restrictive language of the CMS indicates that in order to invoke this justification, a Party must show that it lacked reasonable alternatives, and that taking is the only available

³⁹ CMS, *supra* note 25, art. III, ¶ 5(c).

⁴⁰ CMS, *supra* note 25, art. III, ¶ 5(d).

⁴¹ CMS, *supra* note 25, art. III, ¶ 5.

⁴² *Id.*

⁴³ Ramsar Resolution IX.23, *supra* note 6, at 1, ¶ 4.

⁴⁴ R. ¶ 18.

⁴⁵ BirdLife Int'l, *Avian Influenza*, BIRDLIFE, http://www.birdlife.org/action/science/species/avian_flu/index. (last visited Nov. 17, 2017).

⁴⁶ Ramsar Resolution IX.23, *supra* note 6, at 1, ¶ 4.

option.⁴⁷ In this case, Renac ignored many other options⁴⁸ which would have been in accordance with its international obligations. These options include controlling environmental transmission routes for the virus, improving surveillance and reporting on domestic and wild birds, and physically separating the food and water sources of wild birds and captive birds.⁴⁹

iii. Dumping disinfectants in the Marsh threatened plant and animal diversity, contrary to Article 8 of the CBD.

The Convention on Biological Diversity (“CBD”) requires Parties to ensure the conservation and sustainable use⁵⁰ of biological resources. Renac acted contrary to this mandate by dispensing ten truckloads full of strong chlorine solution into the Marsh.⁵¹

The Food and Agriculture Organization of the United Nations (“FAO”) warns that disinfecting surroundings with bleach⁵² is counterproductive and harmful to the

⁴⁷ Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 2, CORNELL INT’L L.J. ONLINE 44, 41-46 (2014).

⁴⁸ Ramsar Resolution IX.23, *supra* note 6, at 1, ¶ 4.

⁴⁹ The Ramsar Convention Secretariat, *Ramsar Handbook 4: Avian Influenza and Wetlands*, RAMSAR 38 (2010) <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-04.pdf> [hereinafter Ramsar Handbook 4].

⁵⁰ Convention on Biological Diversity, art. 8(c), June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

⁵¹ C. ¶ 46.

⁵² R. ¶ 24; C. ¶ 46.

environment.⁵³ Strong chlorine solution should not be used directly on the environment;⁵⁴ the World Health Organization (“WHO”) limits the use of highly-concentrated bleach to the disinfection of excreta, bodies, spills of body fluids, vehicles, and tires only.⁵⁵ By failing to protect the wetland ecosystem⁵⁶ and failing to conserve biological diversity,⁵⁷ Renac has failed to fulfill its mandate under the CBD.

B. Renac must comply with the resolutions of the Conference of the Parties.

Renac cannot evade liability by claiming that the resolutions are not binding.⁵⁸ Aves and Renac consented to these conventions and agreements on the very first year that they were opened for signature,⁵⁹ and have fully participated in all of the Conferences and Meetings of the Parties since then.⁶⁰ Renac never objected to any of the resolutions of the

⁵³ FAO, *Highly pathogenic avian influenza spreading in Europe, South Asia*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, <http://www.fao.org/europe/news/detail-news/en/c/451313/> (Nov. 9, 2016).

⁵⁴ C. ¶ 46.

⁵⁵ WHO, *Collecting, preserving and shipping specimens for the diagnosis of avian influenza A(H5N1) virus infection Guide for field operations: Annex 7. Disinfection*, WORLD HEALTH ORGANIZATION 40 (2006) <http://www.who.int/csr/resources/publications/surveillance/Annex7.pdf>.

⁵⁶ CBD, *supra* note 50, art. 8(d).

⁵⁷ CBD, *supra* note 50 art. 8(c).

⁵⁸ R. ¶ 23.

⁵⁹ C. ¶ 3.

⁶⁰ C. ¶ 5.

parties. As resolutions set forth an authoritative interpretation of international agreements,⁶¹ Renac cannot now impugn the resolutions of the Conference of the Parties.

C. The limiting language of the agreements does not justify Renac's actions.

Renac has brushed off Aves' objections by citing the limiting language of the conventions.⁶² In particular, Renac has banked on phrases including "as far as possible and as appropriate,"⁶³ and "shall endeavour"⁶⁴ to defend its response. However, the limiting language of these agreements does not justify non-compliance.⁶⁵ The principle of *pacta sunt servanda* mandates that every treaty must be performed by Parties in good faith.⁶⁶ This obligation prevails while the treaty is in force.⁶⁷ Moreover, the rationale of this rule is not confined to treaties, but extends to every *pactum* or agreement between states, whatever its particular form.⁶⁸ Furthermore, the terms of a treaty must be read in light of the treaty's object and purpose.⁶⁹ Renac's defense clearly fails considering that the applicable

⁶¹ Philippe Sands, et. al., *Principles of International Environmental Law* 109 (2012).

⁶² R. ¶ 23.

⁶³ CBD, *supra* note 50, arts. 5, 8.

⁶⁴ CMS, *supra* note 25, art. III.

⁶⁵ Ornella Ferrajolo, *State Obligations and Non-compliance in the Ramsar System*, 14, J. OF INT'L WILDLIFE L. AND POL'Y, 248, 243-260 (2011).

⁶⁶ Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

⁶⁷ International Law Commission, Draft Articles on the Law of Treaties with commentaries, United Nations (1966). Viewed 17 Nov 2017 http://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf

⁶⁸ Godefridus J.H. Hoof, *Rethinking the Sources of International Law*, 75 (1983).

⁶⁹ VCLT, *supra* note 66, art. 31 ¶ 1.

agreements are essentially concerned with the conservation of biodiversity⁷⁰ and the protection of habitats.⁷¹

C. Renac violated customary international law.

1. Renac breached its duty not to cause transboundary harm.

The duty not to cause transboundary harm⁷² is a recognized rule of customary international law.⁷³ States have 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.⁷⁴ Renac violated this duty because culling damaged Aves' environment.

The rule has four elements.⁷⁵ First, there must be a physical relationship between the activity concerned and the damage caused. Second, there must be human causation. Third, the damage must meet a certain level of severity that calls for legal action. Lastly, there must be a transboundary movement of harmful effects.

⁷⁰ CBD, *supra* note 50, art. 1; CMS, *supra* note 25, art. 2, ¶ 1; Agreement on the Conservation of African-Eurasian Migratory Waterbirds, art. II, *opened for signature* Aug. 15, 1996, 2003 U.K.T.S. 13 [hereinafter AEWA].

⁷¹ CMS, *supra* note 25, art. 2, ¶ 1; Ramsar, *supra* note 1, Preamble.

⁷² U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1, Principle 2 (Aug., 12, 1992) [hereinafter Rio Declaration].

⁷³ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, 19, ¶ 29 (July 8) [hereinafter Nuclear Weapons].

⁷⁴ Rio Declaration, *supra* note 72, Principle 2.

⁷⁵ Xue Hanqin, *Transboundary Damage in International Law*, 4 (2003).

The first and second requisites are not in dispute. The following discussion on the third and fourth elements will show that culling directly harmed the environment.⁷⁶

i. Culling resulted in damage.

Harm does not need to be serious or substantial in order to be actionable.⁷⁷ It is sufficient that the harm be susceptible of being measured by factual and objective standards.⁷⁸ The average number of wild waterbirds in the Marsh has plunged by a third as a result of Renac's response.⁷⁹ The sharp decrease was detected when Aves began monitoring the ecology of the Marsh immediately after Renac culled the endangered birds.⁸⁰

⁷⁶ *Id.*

⁷⁷ Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 35, ¶ 4 (2001) [hereinafter UN Draft Articles on State Responsibility].

⁷⁸ *Id.*

⁷⁹ R. ¶ 25.

⁸⁰ *Id.*

ii. Culling resulted in transboundary movement of harmful effects.

Renac endangered the safety of Aves and other neighboring states when it culled the wild birds. The FAO⁸¹ and the World Health Organization (“WHO”)⁸² warn that culling exacerbates the problem of HPAI by causing further dispersion of infected birds.⁸³ Disturbance of waterbirds and habitat destruction leads to unforeseen movements of birds into other areas, which will further spread the virus.⁸⁴

2. Renac violated the precautionary principle.

The precautionary principle mandates states to anticipate, avoid, and mitigate threats to the environment.⁸⁵ It requires that when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.⁸⁶ This has two elements. First, there must be a potentially risky activity; second, the proponent has the

⁸¹ FAO, *Avian Flu: Questions & Answers*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, <http://www.fao.org/avianflu/en/qanda.html> (last visited Nov. 14, 2017) [hereinafter *Avian Flu: Q&A*].

⁸² WHO, *Responding to the avian influenza pandemic threat*, WORLD HEALTH ORGANIZATION 5, ¶ 2 (2005) http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_05_8-EN.pdf.

⁸³ Ramsar Resolution IX.23, *supra* note 6, ¶ 17.

⁸⁴ Scientific Task Force on Avian Influenza and Wild Birds, *supra* note 8, at 4.

⁸⁵ IUCN, *Guidelines for Applying the Precautionary Principle*, INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE 1, (2007) http://cmsdata.iucn.org/downloads/In250507_ppguidelines.pdf.

⁸⁶ Nicholas Ashford, et. al., *Wingspread Statement on the Precautionary Principle*, WORLD HEALTH ORGANIZATION 1 (1998) www.who.int/ifcs/documents/forums/forum5/wingspread.doc.

burden of proving that its proposed act poses no risk to the environment or human health.⁸⁷ Culling endangers both human and wildlife health because the disturbance of waterbirds leads to unforeseen movements of the infected birds into other areas, resulting to even greater dispersal of the virus.⁸⁸

Given the threat posed by culling, Renac had the burden of proving that its actions would not harm the environment.⁸⁹ Renac violated the precautionary principle because it engaged in a potentially risky activity without first proving that the action posed no harm.

D. Renac's failure to comply with its obligations is not justified under international law.

1. Economic incapacity does not justify non-compliance with treaty obligations.

Renac argues that its non-compliance was justified because it is a developing country.⁹⁰ However, in the *Deep Seabed* case, it was definitively held that developing states are not accorded any preferential treatment⁹¹ when it comes to compliance with best environmental practices.⁹² In fact, other developing countries such as Vietnam have

⁸⁷ Daniel Bodansky, et. al., *Oxford Handbook of International Law*, 598 (2007).

⁸⁸ Scientific Task Force on Avian Influenza and Wild Birds, *supra* note 8, at 4.

⁸⁹ Daniel Bodansky, et. al., *supra* note 87, at 598.

⁹⁰ R. ¶ 23.

⁹¹ Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, ITLOS Rep. 10, ¶ 158.

⁹² *Id.* at ¶ 161.

successfully eliminated outbreaks through the use of rigorous biosecurity measures.⁹³ Therefore, Renac cannot invoke its limited financial means to justify its breach.

2. Renac was not acting under a state of necessity.

Art. 25 of the Articles of State Responsibility⁹⁴ recognizes that non-performance of an international obligation can be justified if a state's essential interest is threatened by a *grave and imminent peril*.⁹⁵ In order to successfully invoke this justification, a state must show that it had no other means to safeguard its interests.⁹⁶ However, Renac cannot invoke this justification because it had many other options which would not have run afoul of its international obligations.⁹⁷ Indeed, because Renac did not exhaust the lawful options at its disposal, it cannot claim that it was acting due to a state of necessity.

⁹³ FAO, *Approaches to Controlling, Preventing, and Eliminating H5N1 Highly Pathogenic Avian Influenza in Endemic Countries*, 51 (2011).

⁹⁴ UN Draft Articles on State Responsibility, *supra* note 77, at 80, art. 25.

⁹⁵ *Id.* at 80, ¶ 1.

⁹⁶ *Id.* at 85, ¶ 14.

⁹⁷ *Supra* 7, 8.

II. RENAC VIOLATED INTERNATIONAL LAW BY DELISTING THE MARSH AS A RAMSAR SITE AND AS A TRANSBOUNDARY RAMSAR SITE.

A. Renac failed to satisfy the requisites of delisting the Marsh under the Ramsar.

1. Renac failed to justify delisting the Marsh.

Parties may restrict or delist wetlands included in the List of Wetlands of International Importance (“Ramsar Sites”) only pursuant to urgent national interests.⁹⁸ Renac has no urgent national national interest to justify delisting the Marsh.

i. Renac’s reasons for delisting do not qualify as urgent national interests.

To invoke urgent national interests, Renac must not only prove that the proposed measures⁹⁹ are devoted to the interests of the whole nation.¹⁰⁰ It must also be established that prompt action is necessary.¹⁰¹ The element of urgency is patently absent in this case.

⁹⁸ Ramsar, *supra* note 1, art. 2, ¶ 5.

⁹⁹ R. ¶ 26.

¹⁰⁰ 25th Meeting of the Standing Committee of the Convention on Wetlands, *DOC. SC25-8: Analysis and recommendations of IUCN’s Environmental Law Centre (Decision.SC24-10) on Revisions to Ramsar sites boundaries, interpretation of Articles 2.5.and.4.2 (Resolution VII.23, paragraphs 9, 10, 11 & 13)*, RAMSAR 18, ¶ a (2000) <http://www.ramsar.org/sites/default/files/documents/tmp/pdf/sc/25/SC25-08.pdf> [hereinafter Ramsar DOC. SC25-8].

¹⁰¹ Ramsar DOC. SC25-8, *supra* note 102, at 18, ¶ b.

a. Immediate action is not required to avert a significant threat.

Parties must prove that immediate action is required to avert a significant threat,¹⁰² and that the situation is critical, presenting a significant danger posed by the action or inaction.¹⁰³ Under Ramsar, countries without any infection within its geographical region are classified as low risk areas.¹⁰⁴ Given Renac's failure to allege the existence of HPAI in neighboring countries,¹⁰⁵ immediate action is unwarranted.

b. There is no increasing threat to Renac's economy, public health, or food security.

Additionally, Parties must prove that the threat is increasing.¹⁰⁶ There is no increasing harm to Renac, as it has not experienced an outbreak since February 2015.¹⁰⁷

¹⁰² 8th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, *Resolution VIII.20: General guidance for interpreting "urgent national interests" under Article 2.5 of the Convention and considering compensation under Article 4.2*, RAMSAR 3, ¶ 3.4 (2002) http://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_viii_20_e.pdf [hereinafter Ramsar Resolution VIII.20].

¹⁰³ Ramsar DOC. SC25-8, *supra* note 100, at 19, ¶ 70.

¹⁰⁴ Ramsar Handbook 4, *supra* note 49, at 12, ¶ 17.

¹⁰⁵ R. ¶ 24.

¹⁰⁶ Ramsar DOC. SC25-8, *supra* note 100, at 21, ¶ 88.

¹⁰⁷ R. ¶ 24.

ii. The interests invoked by Renac fail to outweigh the national interest of maintaining wetlands and their benefits.

The interests cited by the delisting party must outweigh the national interest in maintaining wetlands and their benefits.¹⁰⁸ The benefits of maintaining the Marsh remain paramount over the interests cited by Renac, as Renac is dependent on the benefits of the Marsh, there are reasonable alternatives to delisting the Marsh, and the Marsh is a habitat of rare, threatened, and endangered species. Furthermore, the proposed activities are neither advantageous over the long-term nor are they the least harmful activities.

a. Renac is dependent on the benefits of the Marsh.

Parties have to consider the national benefits of maintaining the integrity of the wetlands system and its related benefits prior to delisting.¹⁰⁹ The greater the wetland's economic, social, and environmental value is, the higher the threshold to be met.¹¹⁰ Extensive reliance on wetlands by countries prevents them from delisting Ramsar Sites.¹¹¹

Renac relies extensively on the Marsh. It serves a vital economic function to Renac as an ecotourism hotspot.¹¹² Its conservation is also indispensable to the safety of drinking

¹⁰⁸ Ramsar DOC. SC25-8, *supra* note 100, at 18, ¶ 71.

¹⁰⁹ Ramsar Resolution VIII.20, *supra* note 102, at 3 ¶ 3.1.

¹¹⁰ Ramsar DOC. SC25-8, *supra* note 100, at 19, ¶ 73.

¹¹¹ Ramsar DOC. SC25-8, *supra* note 100, at 19, ¶ 71.

¹¹² R. ¶ 11.

water sourced from it¹¹³ as wetlands are crucial in preventing nutrients from reaching toxic levels in groundwater.¹¹⁴

b. There are reasonable alternatives to delisting the Marsh.

Should there be reasonable alternatives, including the “without project” option, Parties may not delist Ramsar Sites.¹¹⁵

Reasonable alternatives were available to Renac. Renac has had over 3 years since the first major HPAI outbreak¹¹⁶ to implement financially accessible disease control programs, including organizing community-based early warning networks through existing paraveterinary village workers, publication of simple biosecurity guidelines on HPAI control in the local language, providing access to credit or microfinance for rehabilitation, and developing farmers’ groups and/or associations to improve awareness and dissemination.¹¹⁷ Moreover, while Renac claims to be financially incapable of improving

¹¹³ R. ¶ 18; C. ¶ 26.

¹¹⁴ Ramsar Convention Secretariat, *Ramsar Factsheet 5: Water Purification*, RAMSAR 1, (2011) http://www.ramsar.org/sites/default/files/documents/library/services_05_e.pdf.

¹¹⁵ Ramsar Resolution VIII.20, *supra* note 104, at 3 ¶ 3.6; Ramsar DOC. SC25-8, *supra* note 100, at 19, ¶ 72.

¹¹⁶ R. ¶ 16.

¹¹⁷ FAO, et. al., *HPAI Global Strategy*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS 24 (2005) <http://www.fao.org/avianflu/documents/hpaiglobalstrategy31oct05.pdf>.

biosecurity measures,¹¹⁸ it could have sought financial aid available to Parties to defray project expenses.¹¹⁹

c. The Marsh is a valuable habitat of rare, threatened, and endangered species of wild waterbirds.

No Ramsar Site harboring endangered species may be removed from the List.¹²⁰ If it is recognized either through legislation or scientific determination that a wetland is irreplaceable, it may not be delisted.¹²¹

The Marsh is the habitat of various rare, threatened, and endangered waterbirds¹²² including the endangered blue-crowned crane.¹²³ As other similar freshwater wetlands in Renac do not provide significant habitat to wild waterbirds¹²⁴ such as the blue-crowned crane, delisting the Marsh is a violation of Ramsar.

¹¹⁸ R. ¶ 23.

¹¹⁹ The Ramsar Convention Secretariat, *Ramsar assistance programs*, RAMSAR, http://archive.ramsar.org/cda/en/ramsar-activities-grants/main/ramsar/1-63-68_4000_0__ (last visited Nov. 14, 2017) [hereinafter Ramsar assistance programs]; The Ramsar Convention Secretariat, *The Nagao Wetland Fund*, RAMSAR, <http://www.ramsar.org/activities/the-nagao-wetland-fund> (last visited Nov. 14, 2017). [hereinafter The Nagao Wetland Fund]

¹²⁰ Ramsar Resolution VIII.20, *supra* note 102, at 3 ¶ 3.8; Ramsar DOC. SC25-8, *supra* note 102, at 19, ¶ 75.

¹²¹ *Id.*

¹²² R. ¶ 11.

¹²³ R. ¶ 13.

¹²⁴ C. ¶ 27.

d. The activities proposed are not advantageous over the long term.

Ramsar requires proposed actions to offer greater benefits over the long term.¹²⁵ However, bird scarers or devices which disperse birds from a certain area¹²⁶ have been shown to have decreasing effectiveness over time.¹²⁷ Draining wetlands, on the other hand, does not prevent the spread of HPAI.¹²⁸ In contrast, improving biosecurity through measures such as relocation of facilities have been proven to have high persistent effectiveness and little recurring cost over time.¹²⁹

¹²⁵ Ramsar Resolution VIII.20, *supra* note 102, at 3, ¶ 3.10.

¹²⁶ D. Hockin, et al., *Examination of the Effects of Disturbance on Birds with Reference to its Importance in Ecological Assessments*, 36, JOURNAL OF ENVTL. MGMT., 264, 253-286 (1992).

¹²⁷ *Id.* at 263-264.

¹²⁸ IUCN, et. al., *Role of Wild Birds in the Persistence and Spread of Highly Pathogenic Avian Influenza*, IUCN Portals 7 (2009) <https://portals.iucn.org/library/sites/library/files/documents/2009-056.pdf>; Scientific Task Force on Avian Influenza and Wild Birds, *supra* note 8, at 4.

¹²⁹ FAO, *Biosecurity for HPAI: Issues and Options*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS 22-23, 29 (2008) <http://www.fao.org/3/a-i0359e.pdf> [hereinafter *Biosecurity for HPAI: Issues and Options*].

e. Using waterbird deterrents and draining the wetland are not the least harmful alternatives.

The alternative that causes the least harm to the site must be carried out.¹³⁰ Renac's plan to install bird scarers and drain portions of the wetland¹³¹ may disperse the wild waterbirds¹³² and consequently spread the virus in other areas.¹³³ On the other hand, recommended biosecurity measures such as improving poultry housing¹³⁴ do not pose the same risks.

2. Renac failed to comply with the duty of international cooperation.

Ramsar requires Parties to consult one another regarding the implementation of obligations arising from the treaty.¹³⁵ Moreover, Parties with shared wetland systems are mandated to consult one another in transboundary wetland management with adjacent jurisdictions.¹³⁶ The ICJ reaffirms this general obligation in *Certain Activities* and

¹³⁰ Ramsar Resolution VIII.20, *supra* note 102, at 3, ¶ 3.11; Ramsar DOC. SC25-8, *supra* note 100, at 19, ¶ 72.

¹³¹ R. ¶ 26; C. ¶ 55.

¹³² Ramsar Resolution IX.23, *supra* note 6, at 3, ¶ 18.

¹³³ C. ¶ 36; Avian Flu: Q&A, *supra* note 80.

¹³⁴ Biosecurity for HPAI: Issues and Options, *supra* note 132, at 23.

¹³⁵ Ramsar, *supra* note 1, art. 5.

¹³⁶ 7th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, *Resolution VII.19: Guidelines for International Cooperation under the Ramsar Convention*, RAMSAR 8, ¶ 11 (1999) [hereinafter Ramsar Resolution VII.19].

Construction of a Road.¹³⁷ While the ICJ ruled in the same cases that Parties are under no obligation to consult with regard to particular projects they are undertaking, this principle does not apply in the instant case, as a reading of Art. 5¹³⁸ with Art. 2(6)¹³⁹ of Ramsar implies an obligation to consult regarding the promotion of conservation and wise use of wetlands in delisting.¹⁴⁰ Additionally, the cases did not involve transboundary Ramsar sites.¹⁴¹

Pursuant to the rules of treaty interpretation,¹⁴² this duty must be carried out in good faith and must be genuine and not mere formalities.¹⁴³ Neither Party may insist upon its own position without contemplating any modification of it¹⁴⁴ and systematic refusals to take into consideration adverse proposals or interests evince bad faith.¹⁴⁵

¹³⁷ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica)*, Judgment, 2015 I.C.J. 662, 709, ¶ 110; 725, ¶ 172 (Dec. 16) [hereinafter *Certain Activities and Construction of a Road*].

¹³⁸ Ramsar, *supra* note 1, art. 5.

¹³⁹ Ramsar, *supra* note 1, art. 2(6).

¹⁴⁰ *See Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica)* Judgment, 15, ¶¶ 41-42 (Dec. 16, 2015) <http://www.icj-cij.org/files/case-related/150/18868.pdf> (separate opinion by Dugard, J.).

¹⁴¹ *Certain Activities and Construction of a Road*, *supra* note 148, at 691, ¶ 58.

¹⁴² VCLT, *supra* note 66, art. 31 ¶(3)(c).

¹⁴³ *Lake Lanoux Arbitration (Fr. v. Spain)*, 12 R.I.A.A. 281, 300 (1957) [“hereinafter *Lake Lanoux*”].

¹⁴⁴ *North Sea Continental Shelf Cases (Ger. v. Den.)*, Judgment, 1969 I.C.J. Rep. 3, ¶ 85 (February 20) [hereinafter *Continental Shelf Cases*].

¹⁴⁵ *Lake Lanoux*, *supra* note 146, 307.

Renac repeatedly failed to address Aves' concerns regarding the delisting of the Marsh.¹⁴⁶ Their refusal to consider alternative proposals and interests constitutes a violation of its obligation of international cooperation under the Ramsar.

3. Renac violated its obligation to observe the conservation and wise use of wetlands in delisting the Marsh.

As it has in its responses to the HPAI outbreaks,¹⁴⁷ Renac breached its obligation to observe the conservation and wise use of wetlands in delisting the Marsh.¹⁴⁸

i. Delisting the Marsh will change the ecological character of the wetland.

As elaborated in the first submission, Parties cannot change the ecological character of the wetland consistent with wise use.¹⁴⁹ Renac delisted the wetland to drain and fill areas near farms,¹⁵⁰ which will reduce the size of the Marsh. Such physical alterations of the ecosystem's components are associated with regional and global reductions in wild waterbird populations that inhabit affected wetlands.¹⁵¹ Thus, the proposed measures will alter the ecological character of the Marsh and are contrary to its wise use.

¹⁴⁶ R. ¶ 31, 33.

¹⁴⁷ *Supra*, at 1-4.

¹⁴⁸ Ramsar, *supra* note 1, art. 2 ¶ 6; *See* earlier discussion on wise use, *supra*, at 1-2.

¹⁴⁹ *See* earlier discussion on the maintenance of the ecological character of the wetland, *supra*, at 2-3.

¹⁵⁰ R. ¶ 26; C. ¶ 55.

¹⁵¹ Hassan Partow, *The Mesopotamian Marshlands: Demise of an Ecosystem*, 34 (2001).

ii. Draining the Marsh and installing bird scarers are incompatible with the sustainable development of the Marsh.

The Marsh is a habitat of blue-crowned cranes which play an important ecosystem role in seed dispersal,¹⁵² a crucial mechanism for the survival of plant species.¹⁵³ However, Renac plans to delist the Marsh to install bird scarers¹⁵⁴ and drain portions of the wetland¹⁵⁵ for the benefit of its economy.¹⁵⁶ Such measures will displace blue-crowned cranes from their wintering site¹⁵⁷ and are recognized by the IUCN as a major threat to the endangered waterbird.¹⁵⁸ As these mechanisms will endanger the Marsh's capacity to provide for the needs of present and future generations, they are contrary to the principle of sustainable development as earlier defined and do not constitute wise use of the Marsh.

¹⁵² Margaret Thairu, *Balearica regulorum*, ANIMAL DIVERSITY WEB, http://animaldiversity.org/accounts/Balearica_regulorum/ (last visited Nov. 14, 2017).

¹⁵³ Science Buddies, *Gone with the Wind: Plant Seed Dispersal*, SCIENTIFIC AMERICAN, <https://www.scientificamerican.com/article/gone-with-the-wind-plant-seed-dispersal/> (Aug. 6, 2015).

¹⁵⁴ R. ¶ 26.

¹⁵⁵ R. ¶ 26; C. ¶ 55.

¹⁵⁶ R. ¶ 34.

¹⁵⁷ R. ¶ 13.

¹⁵⁸ Int'l Union for Conservation of Nature and Nat. Res., *Balearica Regulorum*, THE IUCN RED LIST ON THREATENED SPECIES, <http://www.iucnredlist.org/details/22692046/0> (last visited Nov. 14, 2017).

4. Renac failed to provide adequate compensation.

Parties which delist a Ramsar Site are required to compensate for any loss of wetland resources.¹⁵⁹ Ramsar requires the compensatory wetland to have at least equivalent value and function as the affected wetland.¹⁶⁰

i. No compensatory replacement is available.

Ramsar requires that a compensatory replacement must be available at the time of delisting.¹⁶¹ Absence of a similar habitat bars Parties from invoking urgent national interests to delist a wetland.¹⁶²

The remaining freshwater wetlands in Renac's territory are not habitats of wild waterbirds and each only have an area approximately 0.005% that of the Marsh.¹⁶³ As no compensatory replacement is available, Renac cannot delist the Marsh.

ii. Renac failed to maintain the overall value of its Ramsar Sites at the national and global level.

Parties are bound to maintain the overall value of their wetland area included in the Ramsar List at the national and global level.¹⁶⁴ To this end, Parties must ensure that the

¹⁵⁹ Ramsar, *supra* note 1, art. 4, ¶ 2.

¹⁶⁰ Ramsar DOC. SC25-8, *supra* note 100, at 20, ¶ 76.

¹⁶¹ Ramsar Resolution VIII.20, *supra* note 102, at 4 ¶ 4.2.

¹⁶² Ramsar DOC. SC25-8, *supra* note 100, at 20, ¶ 81.

¹⁶³ R. ¶ 9; C. ¶ 27.

¹⁶⁴ Ramsar Resolution VIII.20, *supra* note 102, at 4 ¶ 4.1.

compensation is at least as valuable and similar to the affected wetland,¹⁶⁵ and as close as possible to the impact site.¹⁶⁶

The Marsh is a freshwater wetland rich in biodiversity that provides important habitat for fish and waterbirds.¹⁶⁷ It likewise serves as a wintering site of the blue-crowned crane,¹⁶⁸ making Renac an essential part of a network of range states for the migratory waterbird. Furthermore, the wetland serves important recreational, economic, and cultural functions as it is a popular site for birdwatching and ecotourism,¹⁶⁹ as well as the venue for Aves' weeklong festival celebrating the blue-crowned crane.¹⁷⁰

In contrast, the compensation offered is a saltwater wetland associated with lesser biodiversity¹⁷¹ compared to freshwater wetlands like the Marsh. The deficit in size¹⁷² likewise negatively affects overall biodiversity, as fewer species are associated with smaller wetlands.¹⁷³ The replacement wetland also supports fewer waterbirds¹⁷⁴ and is not a habitat of the endangered blue-crowned crane.¹⁷⁵ Moreover, the compensation satisfies

¹⁶⁵ Ramsar DOC. SC25-8, *supra* note 100, at 20, ¶ 78.

¹⁶⁶ Ramsar DOC. SC25-8, *supra* note 100, at 16, ¶ 55.

¹⁶⁷ R. ¶ 11.

¹⁶⁸ R. ¶ 13.

¹⁶⁹ R. ¶ 11.

¹⁷⁰ R. ¶ 14.

¹⁷¹ Paul A. Keddy, *Wetland Ecology: Principles and Conservation*, 214-221 (2010).

¹⁷² R. ¶ 29.

¹⁷³ Paul A. Keddy, *supra* note 171, at 239

¹⁷⁴ R. ¶ 12; C. ¶ 32.

¹⁷⁵ R. ¶ 29.

only three criteria for identifying Ramsar Sites,¹⁷⁶ less than the Marsh, which satisfies four criteria.¹⁷⁷ Additionally, the replacement wetland does not have equivalent recreational, economic, and cultural value as the Marsh as it has not been alleged to have similar functions.¹⁷⁸ It is also excessively distant from the affected wetland at 300 miles away.¹⁷⁹ Clearly, Renac violated its duty to maintain the overall value of its Ramsar Sites.

iii. The removal of invasive species is not relevant to the ecological character, habitat, or value of the Marsh.

In enhancing and preserving the compensation offered, Ramsar requires the compensatory measure to be relevant to the ecological character, habitat, or value of the affected Ramsar Site.¹⁸⁰ This mandates Parties to compensate for the negative effects of the plan or project intended in the affected wetland.¹⁸¹

Renac plans to carry out measures¹⁸² that threaten wild waterbirds including the endangered blue-crowned crane.¹⁸³ However, Renac only plans to compensate for this by removing invasive species from the replacement wetland,¹⁸⁴ which exclusively benefits

¹⁷⁶ C. ¶ 32.

¹⁷⁷ R. ¶ 12.

¹⁷⁸ R. ¶ 29.

¹⁷⁹ *Id.*

¹⁸⁰ Ramsar Resolution VIII.20, *supra* note 102, at 4 ¶ 4.3.

¹⁸¹ Ramsar DOC. SC25-8, *supra* note 100, at 16, ¶ 54.

¹⁸² R. ¶ 26.

¹⁸³ Int'l Union for Conservation of Nature and Nat. Res., *supra* note 163.

¹⁸⁴ C. ¶ 31.

species native to it.¹⁸⁵ Such measure does not directly compensate for habitat destruction affecting wild waterbirds inhabiting the Marsh, like the endangered blue-crowned crane.

iv. Renac failed to address scientific and other certainties.

Given the risks associated with replacing wetlands, scientific and other uncertainties must be addressed¹⁸⁶ through providing more area as insurance and anticipating a greater margin for error¹⁸⁷ to compensate for dissimilarity of the replacement wetland.¹⁸⁸

Previously, Belgium compensated for restricting the boundaries of the Galgenschoor Ramsar Site due to its urgent national interests by offering wet grassland habitat along the Yzer River with an area approximately 67 times larger than that of the affected wetland as replacement.¹⁸⁹ On the contrary, Renac offered compensation that is 15% smaller than the Marsh.¹⁹⁰ Such size is disproportionate to the risks associated with wetland replacement given the dissimilarity of the compensation offered to the Marsh.¹⁹¹

¹⁸⁵ Ctr. for Agric. and Biosciences Int'l, *Controlling invasive species*, CABI.ORG, <https://www.cabi.org/projects/controlling-invasive-species/> (last visited Nov. 14, 2017).

¹⁸⁶ Ramsar Resolution VIII.20, *supra* note 102, at 4 ¶ 4.4.

¹⁸⁷ Ramsar DOC. SC25-8, *supra* note 100, at 20, ¶ 79.

¹⁸⁸ Ramsar DOC. SC25-8, *supra* note 100, at 16, ¶ 55.

¹⁸⁹ DOC. SC25-8, *supra* note 100, at 6, ¶ 11.

¹⁹⁰ R. ¶¶ 9, 29.

¹⁹¹ *See* earlier discussion on the differences between the Marsh and the replacement wetland, *supra*, 25-27.

v. Renac delisted the Marsh before compensation was in place.

Ramsar provides that Parties must consider the timing of the compensatory measure.¹⁹² A Ramsar Site must not be affected before compensation is in place as the carrying capacity of the system will be reduced in the interval.¹⁹³

In defiance, Renac delisted the Marsh as a Ramsar Site even before it has enhanced and preserved the proposed compensation through removing invasive species and listing it as a Ramsar Site.¹⁹⁴

B. Renac must comply with the resolutions of the Conference of the Parties.

The binding force of the resolutions in question are equally compelling as regards Renac's obligation not to delist the Marsh, due to its consistent failure to object to their adoption.¹⁹⁵

C. The limiting language does not justify Renac's actions.

Likewise, the principle of *pacta sunt servanda* precludes Renac from violating its treaty obligations with respect to delisting merely on the basis of the laws' limiting language.¹⁹⁶

¹⁹² Ramsar Resolution VIII.20, *supra* note 102, at 4 ¶ 4.5

¹⁹³ Ramsar.DOC. SC25-8, *supra* note 100, at.20, ¶ 80.

¹⁹⁴ R. ¶¶ 29, 34; C. ¶ 29.

¹⁹⁵ See earlier discussion on applicability of resolutions, *supra*, at 9.

¹⁹⁶ See earlier discussion on applicability of resolutions, *supra*, at 9-10.

D. Renac violated its obligations not to cause transboundary harm in delisting the Marsh.

Renac has violated the duty not to cause transboundary harm not only in its responses to the HPAI outbreaks,¹⁹⁷ but also in delisting the Marsh. In addition to the obligation to redress transboundary harm *ex post facto*, States are mandated to control and regulate in advance sources of potential significant transboundary harm.¹⁹⁸ This duty of preventing transboundary harm covers situations in which such damage is merely threatened, provided the risk thereof is significant in terms of a high probability of serious consequences.¹⁹⁹

Delisting the Marsh allows Renac to evade the duty to conserve its half of the wetland.²⁰⁰ As the Marsh is an equally shared resource,²⁰¹ which remains an ecologically coherent ecosystem regardless of the territorial boundary dividing it,²⁰² this will compromise the entire wetland's rich biodiversity and capacity to provide habitat to wild waterbirds²⁰³ including blue-crowned cranes,²⁰⁴ inevitably harming Aves' environment. This will also violate Aves' rights on the common resource, as habitat conservation is

¹⁹⁷ See earlier discussion on transboundary harm from Renac's responses, *supra*, at 10-12.

¹⁹⁸ Daniel Bodansky, *supra* note 87, at 539.

¹⁹⁹ *Id.*

²⁰⁰ Ramsar, *supra* note 1, art. 3(1).

²⁰¹ R. ¶ 9.

²⁰² The Ramsar Convention Secretariat, *Transboundary Ramsar Sites*, RAMSAR, http://archive.ramsar.org/cda/en/ramsar-documents-trss/main/ramsar/1-31-119_4000_0__ (July 5, 2013).

²⁰³ R. ¶ 11.

²⁰⁴ R. ¶ 13.

indispensable to the Marsh's recreational,²⁰⁵ cultural,²⁰⁶ and economic²⁰⁷ benefits to Aves. Considering the indisputable high risk of significant harm to Aves' environment and interests, the ICJ must declare delisting as a violation of this duty of customary international law.

E. Renac cannot invoke its sovereignty to justify delisting the Marsh.

While Parties are guaranteed permanent sovereignty over their natural wealth and resources²⁰⁸ under customary international law²⁰⁹ and Ramsar,²¹⁰ such right is not absolute. The Stockholm and Rio Declarations restrain Parties from engaging in activities that cause damage to the environment of other Parties or outside the limits of their national jurisdiction.²¹¹ Art. 5 of Ramsar likewise mandates international cooperation in the management of transboundary wetlands.²¹²

²⁰⁵ R. ¶ 11.

²⁰⁶ R. ¶ 14.

²⁰⁷ R. ¶¶ 1, 11.

²⁰⁸ G.A. Res. 1803 (XVII), ¶ 1 (Dec. 14, 1962); G.A. Res. 2158 (XXI) ¶ 1 (Nov. 25, 1966); G.A. Res. 3171 ¶ 1 (Dec. 17, 1973); U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc.A/CONF.48/14/Rev. 1, Principle 21 (June 16, 1972) [hereinafter Stockholm.Declaration]; Rio.Declaration, *supra* note 75, Principle 2; CBD,*supra* note 50, Preamble ¶ 4; art.3.

²⁰⁹ *Armed Activities on the Territory of the Congo (D.R.C. v. Uganda)*, Judgment, 2005 I.C.J. Rep. 168, ¶244 (December 19).

²¹⁰ Ramsar, *supra* note 1, art. 2, ¶ 3; Ramsar Resolution VIII.20, *supra* note 105, 3, ¶ 1.

²¹¹ Stockholm Declaration, *supra* note 197, Principle 21; Rio Declaration *supra* note 75, Principle 2

²¹² Ramsar, *supra* note 1, art. 5.

As approximately half of the Marsh is located within each of the territories of Aves and Renac,²¹³ the actions of either country may negatively impact the adjacent jurisdiction.²¹⁴ Recognizing this, both Parties engaged in an ad hoc, informal cooperative management of the Marsh.²¹⁵ Therefore, Renac's unilateral delisting of the Marsh under the pretense of sovereignty²¹⁶ is indefensible as it oversteps the limits imposed on this principle of international law.

²¹³ R. ¶ 9.

²¹⁴ Ramsar Resolution VII.19, *supra* note 139, 8 ¶ 11.

²¹⁵ R. ¶ 9.

²¹⁶ R. ¶ 31.

CONCLUSION AND PRAYER

Applicant, the Federal States of Aves, respectfully requests the ICJ to adjudge and declare that:

1. The Republic of Renac violated international law by culling of the blue crowned crane and dispensing disinfectants in the Marsh.
2. The Republic of Renac violated international law by delisting the Marsh as a Ramsar Site and Transboundary Ramsar Site, and the proposed compensation was inadequate.

RESPECTFULLY SUBMITTED,
AGENTS OF THE APPLICANT