

PROTECTING THE CORAL REEF ENVIRONMENT IN THE SOUTH CHINA SEA AS AN OBLIGATION *ERGA OMNES*

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On 12 July 2016, the Permanent Court of Arbitration in the South China Sea Arbitration Case (*The Republic of the Philippines v. The People's Republic of China, Merits and Final Award*) rendered a decision finding that the massive reclamation activities and the construction of artificial islands by China at seven features in the disputed Spratly Islands have caused severe harm to the coral environment. In addition, the Arbitral Tribunal made a finding that Chinese fishermen engaged in the harvesting of endangered sea turtles, coral, and giant clams on a substantial scale in the South China Sea, applying methods that inflict severe damage on the coral reef environment.

This paper examines the notion that the ruling of the arbitration tribunal establishes not just an obligation for China's breach in protecting the marine environment with respect to fragile ecosystems and the habitat of depleted, threatened or endangered species under Articles 192 and 194 of the United Nations Convention on the Law of the Sea against the Philippines, but more significantly, creates a rule of state responsibility against China for violating its obligation towards the international community as a whole in protecting the coral reef environment in the South China Sea. Obligations *erga omnes*, first discussed by the International Court of Justice in the *Barcelona Traction Case*, are obligations of a State towards the international community as a whole which are the concern and responsibility of all States and for whose protection all States have a legal interest. These obligations are fundamentally different from those existing vis-à-vis another State. The protection of community environmental interests in the South China Sea is based on the preservation of the right to a balanced and healthy environment under the 1972 U.N. Conference on the Human Environment (Stockholm Declaration), Environment and Development (Rio Declaration), and the 2002 WSSD, the 1992 U.N. Conference on (Johannesburg) Declaration.

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In compliance with the obligation *erga omnes* to protect the coral reef environment in the South China Sea, the paper further explores the proposal of respected international law experts on the enforcement of the arbitral ruling with respect to the protection and preservation of the coral reef environment in the West Philippine Sea, a portion of the South China Sea within Philippine territorial jurisdiction: the establishment of a marine park or sanctuary over those maritime areas in the West Philippine Sea where the Philippines exercises sovereignty or jurisdiction, for the benefit of future generations.