

## EN BANC

[ G.R. No. 206510, September 16, 2014 ]

**MOST REV. PEDRO D. ARIGO**, Vicar Apostolic of Puerto Princesa D.D.; **MOST REV. DEOGRACIAS S. INIGUEZ, JR.**, Bishop-Emeritus of Caloocan, **FRANCES Q. QUIMPO**, **CLEMENTE G. BAUTISTA, JR.**, **Kalikasan-PNE**, **MARIA CAROLINA P. ARAULLO**, **RENATO M. REYES, JR.**, **Bagong Alyansang Makabayan**, **HON. NERI JAVIER COLMENARES**, **Bayan Muna Party-list**, **ROLAND G. SIMBULAN, PH.D.**, **Junk VFAMovement**, **TERESITA R. PEREZ, PH.D.**, **HON. RAYMOND V. PALATINO**, **Kabataan Party-list**, **PETER SJ. GONZALES**, **Pamalakaya**, **GIOVANNI A. TAPANG, PH. D.**, **Agham**, **ELMER C. LABOG**, **Kilusang Mayo Uno**, **JOAN MAY E. SALVADOR**, **Gabriela**, **JOSE ENRIQUE A. AFRICA**, **THERESA A. CONCEPCION**, **MARY JOAN A. GUAN**, **NESTOR T. BAGUINON, PH.D.**, **A. EDSSEL F. TUPAZ**, **Petitioners**, **VS. SCOTT H. SWIFT** in his capacity as *Commander of the U.S. 7<sup>th</sup> Fleet*, **MARK A. RICE** in his capacity as *Commanding Officer of the USS Guardian*, **PRESIDENT BENIGNO S. AQUINO III** in his capacity as *Commander-in-Chief of the Armed Forces of the Philippines*, **HON. ALBERT F. DEL ROSARIO**, *Secretary, Department of Foreign Affairs*, **HON. PAQUITO OCHOA, JR.**, *Executive Secretary, Office of the President*, **HON. VOLTAIRE T. GAZMIN**, *Secretary, Department of National Defense*, **HON. RAMON JESUS P. PAJE**, *Secretary, Department of Environment and Natural Resources*, **VICE ADMIRAL JOSE LUIS M. ALANO**, *Philippine Navy Flag Officer in Command, Armed Forces of the Philippines*, **ADMIRAL RODOLFO D. ISORENA**, *Commandant, Philippine Coast Guard*, **COMMODORE ENRICO EFREN EVANGELISTA**, *Philippine Coast Guard Palawan*, **MAJOR GEN. VIRGILIO O. DOMINGO**, *Commandant of Armed Forces of the Philippines Command* and **LT. GEN. TERRY G. ROBLING**, *US Marine Corps Forces, Pacific and Balikatan 2013 Exercise Co-Director*, **Respondents**.

## DECISION

**VILLARAMA, JR., J.:**

Before us is a petition for the issuance of a Writ of *Kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) under Rule 7 of A.M. No. 09-6-8-SC, otherwise known as the *Rules of Procedure for Environmental Cases* (Rules), involving violations of environmental laws and regulations in relation to the grounding of the US military ship *USS Guardian* over the Tubbataha Reefs.

## Factual Background

The name “Tubbataha” came from the Samal (seafaring people of southern Philippines) language which means “long reef exposed at low tide.” Tubbataha is composed of two huge coral atolls – the north atoll and the south atoll – and the Jessie Beazley Reef, a smaller coral structure about 20 kilometers north of the atolls. The reefs of Tubbataha and Jessie Beazley are considered part of Cagayancillo, a remote island municipality of Palawan.<sup>[1]</sup>

In 1988, Tubbataha was declared a National Marine Park by virtue of Proclamation No. 306 issued by President Corazon C. Aquino on August 11, 1988. Located in the middle of Central Sulu Sea, 150 kilometers southeast of Puerto Princesa City, Tubbataha lies at the heart of the Coral Triangle, the global center of marine biodiversity.

In 1993, Tubbataha was inscribed by the United Nations Educational Scientific and Cultural Organization (UNESCO) as a World Heritage Site. It was recognized as one of the Philippines’ oldest ecosystems, containing excellent examples of pristine reefs and a high diversity of marine life. The 97,030-hectare protected marine park is also an important habitat for internationally threatened and endangered marine species. UNESCO cited Tubbataha’s outstanding universal value as an important and significant natural habitat for *in situ* conservation of biological diversity; an example representing significant on-going ecological and biological processes; and an area of exceptional natural beauty and aesthetic importance.<sup>[2]</sup>

On April 6, 2010, Congress passed Republic Act (R.A.) No. 10067,<sup>[3]</sup> otherwise known as the “Tubbataha Reefs Natural Park (TRNP) Act of 2009” “to ensure the protection and conservation of the globally significant economic, biological, sociocultural, educational and scientific values of the Tubbataha Reefs into perpetuity for the enjoyment of present and future generations.” Under the “no-take” policy, entry into the waters of TRNP is strictly regulated and many human activities are prohibited and penalized or fined, including fishing, gathering, destroying and disturbing the resources within the TRNP. The law likewise created the Tubbataha Protected Area Management Board (TPAMB) which shall be the sole policy-making and permit-granting body of the TRNP.

The *USS Guardian* is an Avenger-class mine countermeasures ship of the US Navy. In December 2012, the US Embassy in the Philippines requested diplomatic clearance for the said vessel “to enter and exit the territorial waters of the Philippines and to arrive at the port of Subic Bay for the purpose of routine ship replenishment, maintenance, and crew liberty.”<sup>[4]</sup> On January 6, 2013, the ship left Sasebo, Japan for Subic Bay, arriving on January 13, 2013 after a brief stop for fuel in Okinawa, Japan.

On January 15, 2013, the *USS Guardian* departed Subic Bay for its next port of call in Makassar, Indonesia. On January 17, 2013 at 2:20 a.m. while transiting the Sulu Sea, the ship ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan. No one was injured in the incident, and there have been no reports of leaking fuel or oil.

On January 20, 2013, U.S. 7<sup>th</sup> Fleet Commander, Vice Admiral Scott Swift,

expressed regret for the incident in a press statement.<sup>[5]</sup> Likewise, US Ambassador to the Philippines Harry K. Thomas, Jr., in a meeting at the Department of Foreign Affairs (DFA) on February 4, "reiterated his regrets over the grounding incident and assured Foreign Affairs Secretary Albert F. del Rosario that the United States will provide appropriate compensation for damage to the reef caused by the ship."<sup>[6]</sup> By March 30, 2013, the US Navy-led salvage team had finished removing the last piece of the grounded ship from the coral reef.

On April 17, 2013, the above-named petitioners on their behalf and in representation of their respective sector/organization and others, including minors or generations yet unborn, filed the present petition against Scott H. Swift in his capacity as Commander of the US 7<sup>th</sup> Fleet, Mark A. Rice in his capacity as Commanding Officer of the *USS Guardian* and Lt. Gen. Terry G. Robling, US Marine Corps Forces, Pacific and *Balikatan* 2013 Exercises Co-Director ("US respondents"); President Benigno S. Aquino III in his capacity as Commander-in-Chief of the Armed Forces of the Philippines (AFP), DFA Secretary Albert F. Del Rosario, Executive Secretary Paquito Ochoa, Jr., Secretary Voltaire T. Gazmin (Department of National Defense), Secretary Jesus P. Paje (Department of Environment and Natural Resources), Vice-Admiral Jose Luis M. Alano (Philippine Navy Flag Officer in Command, AFP), Admiral Rodolfo D. Isorena (Philippine Coast Guard Commandant), Commodore Enrico Efren Evangelista (Philippine Coast Guard-Palawan), and Major General Virgilio O. Domingo (AFP Commandant), collectively the "Philippine respondents."

### **The Petition**

Petitioners claim that the grounding, salvaging and post-salvaging operations of the *USS Guardian* cause and continue to cause environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which events violate their constitutional rights to a balanced and healthful ecology. They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident.

Specifically, petitioners cite the following violations committed by US respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

The numerous reliefs sought in this case are set forth in the final prayer of the petition, to wit:

1. WHEREFORE, in view of the foregoing, Petitioners respectfully pray that the Honorable Court:
2. Immediately issue upon the filing of this petition a Temporary Environmental Protection Order (TEPO) and/or a Writ of Kalikasan,

which shall, in particular,

- a. Order Respondents and any person acting on their behalf, to cease and desist all operations over the Guardian grounding incident;
  - b. Initially demarcating the metes and bounds of the damaged area as well as an additional buffer zone;
  - c. Order Respondents to stop all port calls and war games under 'Balikatan' because of the absence of clear guidelines, duties, and liability schemes for breaches of those duties, and require Respondents to assume responsibility for prior and future environmental damage in general, and environmental damage under the Visiting Forces Agreement in particular.
  - d. Temporarily define and describe allowable activities of ecotourism, diving, recreation, and limited commercial activities by fisherfolk and indigenous communities near or around the TRNP but away from the damaged site and an additional buffer zone;
3. After summary hearing, issue a Resolution extending the TEPO until further orders of the Court;
4. After due proceedings, render a Decision which shall include, without limitation:
- a. Order Respondents Secretary of Foreign Affairs, following the dispositive portion of *Nicolas v. Romulo*, "to forthwith negotiate with the United States representatives for the appropriate agreement on [environmental guidelines and environmental accountability] under Philippine authorities as provided in Art. V[ ] of the VFA..."
  - b. Direct Respondents and appropriate agencies to commence administrative, civil, and criminal proceedings against erring officers and individuals to the full extent of the law, and to make such proceedings public;
  - c. Declare that Philippine authorities may exercise primary and exclusive criminal jurisdiction over erring U.S. personnel under the circumstances of this case;
  - d. Require Respondents to pay just and reasonable compensation in the settlement of all meritorious claims for damages caused to the Tubbataha Reef on terms and conditions no less severe than those applicable to other States, and damages for personal injury or death, if such had been the case;
  - e. Direct Respondents to cooperate in providing for the attendance of witnesses and in the collection and production

of evidence, including seizure and delivery of objects connected with the offenses related to the grounding of the *Guardian*;

- f. Require the authorities of the Philippines and the United States to notify each other of the disposition of all cases, wherever heard, related to the grounding of the *Guardian*;
- g. Restrain Respondents from proceeding with any purported restoration, repair, salvage or post salvage plan or plans, including cleanup plans covering the damaged area of the Tubbataha Reef absent a just settlement approved by the Honorable Court;
- h. Require Respondents to engage in stakeholder and LGU consultations in accordance with the Local Government Code and R.A. 10067;
- i. Require Respondent US officials and their representatives to place a deposit to the TRNP Trust Fund defined under Section 17 of RA 10067 as a bona fide gesture towards full reparations;
- j. Direct Respondents to undertake measures to rehabilitate the areas affected by the grounding of the *Guardian* in light of Respondents' experience in the Port Royale grounding in 2009, among other similar grounding incidents;
- k. Require Respondents to regularly publish on a quarterly basis and in the name of transparency and accountability such environmental damage assessment, valuation, and valuation methods, in all stages of negotiation;
- l. Convene a multisectoral technical working group to provide scientific and technical support to the TPAMB;
- m. Order the Department of Foreign Affairs, Department of National Defense, and the Department of Environment and Natural Resources to review the Visiting Forces Agreement and the Mutual Defense Treaty to consider whether their provisions allow for the exercise of erga *omnes* rights to a balanced and healthful ecology and for damages which follow from any violation of those rights;
- n. Narrowly tailor the provisions of the Visiting Forces Agreement for purposes of protecting the damaged areas of TRNP;
- o. Declare the grant of immunity found in Article V ("Criminal Jurisdiction") and Article VI of the Visiting Forces Agreement unconstitutional for violating equal protection and/or for violating the preemptory norm of nondiscrimination incorporated as part of the law of the land under Section 2,