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Republic of the Philippines
Supreme Court
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Glasgow, 18 August 2010

Vinuya et al., v. Executive Secretary et al. (G.R. No. 162230)

Hon. Renato C. Corona, Chief Justice

Your Excellency,

My name is Christian J. Tams, and I am a professor of international law at the University of Glasgow. I am writing to you in relation to the use of one of my publications in the above-mentioned judgment of your Honourable Court.

The relevant passage of the judgment is to be found on p. 30 of your Court's Judgment, in the section addressing the concept of obligations *erga omnes*. As the table annexed to this letter shows, the relevant sentences were taken almost word by word from the introductory chapter of my book *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005). I note that there is a generic reference to my work in footnote 69 of the Judgment, but as this is in relation to a citation from another author (Bruno Simma) rather than with respect to the substantive passages reproduced in the Judgment, I do not think it can be considered an appropriate form of referencing.

I am particularly concerned that my work should have been used to support the Judgment's cautious approach to the *erga omnes* concept. In fact, a most cursory reading shows that my book's central thesis is precisely the opposite: namely that the *erga omnes* concept has been widely accepted and has a firm place in contemporary international law. Hence the introductory chapter notes that "[t]he present study attempts to demystify aspects of the 'very mysterious' concept and thereby to facilitate



its implementation" (p.5). In the same vein, the concluding section notes that "the preceding chapters show that the concept is now a part of the *reality* of international law, established in the jurisprudence of courts and the practice of States" (p. 309).

With due respect to your Honourable Court, I am at a loss to see how my work should have been cited to support – as it seemingly has – the opposite approach. More generally, I am concerned at the way in which your Honourable Court's judgment has drawn on scholarly work without properly acknowledging it.

On both aspects, I would appreciate a prompt response from your Honourable Court.

I remain

Sincerely yours

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Annex:

**Comparison of passages of my book
and passages of the Judgment**

Tams, <i>Enforcing Obligations Erga Omnes in International Law</i> (Cambridge University Press 2005)	Supreme Court, Judgment of April 28, 2010
The Latin phrase ' <i>erga omnes</i> ' thus has become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order based on law. p. 3	The Latin phrase ' <i>erga omnes</i> ' thus has become one of the rallying cries of those sharing a belief in the emergence of a value-based international public order based on law. p. 30
As often, the reality is neither so clear nor so bright. p. 3	[However, as is so often the case], the reality is neither so clear nor so bright. p. 30
...whatever the relevance of obligations erga omnes as a legal concept, its full potential remains to be realised in practice. p. 3	[W]hatever the relevance of obligations erga omnes as a legal concept, its full potential remains to be realised in practice. p. 30
Bruno Simma's much-quoted observation encapsulates this feeling of disappointment: 'Viewed realistically, the world of obligations erga omnes is still the world of the "ought" rather than of the "is"' pp. 3-4	Bruno Simma's much-quoted observation encapsulates this feeling of disappointment: 'Viewed realistically, the world of obligations erga omnes is still the world of the "ought" rather than of the "is"' p. 30, in the first sentence of footnote 69