

Taiwan Business Leaders' Forum

For your information...

A SEA OF TROUBLES: The South China Sea UNCLOS ruling & Taiwan

What business leaders need to know

By Ross Darrell Feingold

July 20, 2016

The announcement on July 12th by the Permanent Court of Arbitration (PCA) in The Hague detailing the ruling in favor of the Philippines in its case against China pursuant to the United Nations Convention on the Law of the Sea (UNCLOS) creates significant economic, political and operational risks for Taiwan. Business leaders and government officials must be fully aware of them, factor them into their strategic outlook and be capable of carefully managing them in the coming months and years until tensions in the region stabilize – if they ever do.

Although Taiwan (the ROC) was not a party to the proceedings, immediately after the decision the Presidential Office announced that it will not accept it. Further, it rejects the ruling that features in the Spratly Islands above high-tide mark, including Taiping Island (aka Itu Aba, garrisoned by the Republic of China since 1956) are rocks and not islands; it states that the ROC's sovereignty claims over the South China Sea islands and surrounding waters are unchanged and that it considers the ruling not legally binding.

There are further implications...

1. **Economics:** President Tsai, in numerous speeches and policy papers during her candidacy, in the four month transition period between the election and her inauguration and in the nearly two months since then, has emphasized that her government will pursue a “Go South” policy to encourage Taiwan companies to increase investment in and trade with the 10 ASEAN countries and, quote, “reduce reliance on a single market” - her oft-used way of describing mainland China.

In the six months since President Tsai's election victory, ASEAN members have yet to show a substantive receptiveness to investment or trade agreements with Taiwan. President Tsai's response to the PCA award will likely not only sour ties with the Philippines but also makes it likely that competing South China Sea claimants such as Malaysia, Indonesia and Vietnam (all potential investment destinations for Taiwan manufacturers and service industry companies) will be less receptive in the near term to any forms of greater engagement with Taiwan. If resistance does not come from government entities, one cannot discount the resistance from non-government actors even in tightly controlled societies such as Vietnam. The public reaction in Vietnam when China placed an oil rig in waters claimed

by Vietnam in May 2014, which resulted in violence targeted at China-owned assets (including, mistakenly, Taiwan-owned ones) is an example.

2. **Political:** The speed and tone of the reaction by President Tsai's government will similarly risk political relations with a range of stakeholders domestically, in Asia as well as with the United States. In Taiwan, President Tsai must navigate seeking a balance between maintaining a territorial claim (a publicly popular position) versus actions that embrace legacy ROC claims (anathema to her Democratic Progressive Party) and a policy that appears aligned with China (a concern for the China-wary in Taiwan as well as the United States). In ASEAN, its consensus-based model makes the prospects for Taiwan's desired engagement challenging, whether with an ASEAN member that is or is not a competing claimant in the South China Sea; in the near term, Taiwan-ASEAN relations might cool. In the East China Sea there are analogous disputes over the Diaoyutai and other islands, where the competing claimants are China, Japan and Taiwan; if tensions rise among this group and President Tsai's government reacts similarly as it did to the PCA's South China Sea award, her government's hope for closer relations with Japan is unlikely to become a reality.

3. **Operational Risks:** In the hours after the PCA award critics were quick to identify inconsistencies in responses by different government agencies and senior officials, though some government officials claimed the nature of the PCA award was included in internal scenario analysis. The response was a test of the government's crisis management ability amid other ongoing events such as an accidental naval missile launch that resulted in a civilian death, a bomb attack on a commuter train and post-typhoon cleanup after a storm that was more severe than forecasted. There is room for improvement in leadership and execution, but unfortunately for President Tsai her past experience as a trade negotiator, and Premier Lin Chuan's experience as a finance minister and statistician, are not relevant to the current issues demanding their attention. Moreover, time spent on the PCA decision and related issues is time not spent on such pressing issues as economic policy.

For corporates, public reaction in the Philippines and other ASEAN claimants to Taiwan's SCS stance in the short term requires careful monitoring should it have negative implications for sending Taiwan-based staff and/or Taiwan nationals on business trips or secondment there. In the medium term, both multinational and local enterprises should monitor its impact on closer economic integration between Taiwan and other stakeholder countries, and what that means over the longer term for Taiwan's economy and business environment.

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the globe. The views expressed here are his own, at the request of Taiwan Business Leaders' Forum.

Michael Boyden's comment:

The recent ruling by an international court in The Hague in favour of the Philippines in its suit against the PRC over sovereignty in the South China Sea (SCS) did not, as predicted, go down at all well in Beijing. There was a fair amount of choking over the breakfast congee here in Taiwan too.

As the author of the attached analysis, Ross Feingold, remarked at the TBLF session on 7 July, there are no good options for President Tsai in the SCS situation: she can't be seen siding with the PRC, Taiwan's claims seem to have been largely ignored and asserting them is anyway is likely to antagonize some more or less friendly regional neighbours.

Mind you, it does seem a bit strange calling Taiping Island, where the ROC has had a garrison for some 50 years, which has an airstrip and which exports bottled water to Taiwan's main island, just a rock. Perhaps they mean it's a rock like Gibraltar (population 30,000 or so) is a rock.

Whatever the nuances of the ruling, it could well have implications for Taiwan's relations with other SCS sovereignty claimants that also happen to be important trade and investment partners and targets for President Tsai's "Go South" policy.