

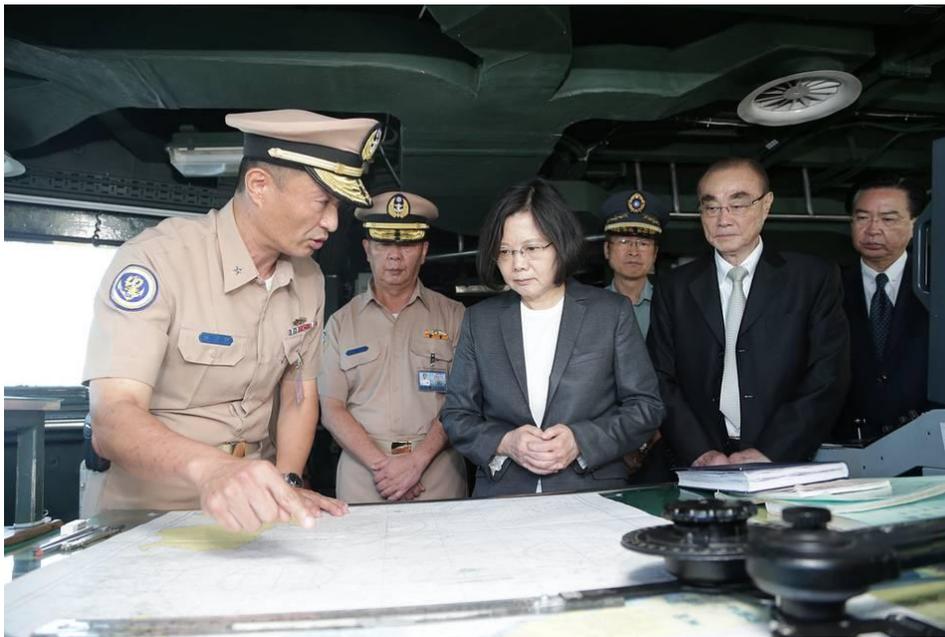
Taiwan Must Tread Carefully on South China Sea Ruling

Taipei's claims are similar to Beijing's. How it responds to the tribunal's decision could put it at odds with its U.S. ally.

By

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Taiwan's President Tsai Ing-wen aboard a Taiwanese navy ship before it sets out to patrol the South China Sea. Photo: Associated Press

Following the arbitration award earlier this month in *Philippines v. China*, much of the media attention has focused on Beijing's defiant reaction to the verdict. Less scrutiny has been paid to the response from Taiwan, even though Taiwan's claims in the region are, at least on paper, almost identical.

In its decision, the tribunal set up in accordance with the United Nations Convention on the Law of the Sea struck down the legitimacy of China's assertion to the large area of the South China Sea encircled by Beijing's so-called nine-dashed line. It also found that none of the features in the Spratly Islands, located just west of the Philippines, are islands capable of generating extended maritime zones.

The dashed line appears on both Chinese and Taiwanese maps. Taiwan also claims the four groups of features in the South China Sea, as well as “their surrounding waters in accordance with international law.” In addition, Taiwan has been in control of the largest natural feature in the Spratlys, Itu Aba, since it first stationed personnel there in 1956.

Unlike China, Taiwan has, since around 2014, taken steps to clarify that it is only claiming maritime zones from land features in accordance with the convention. It has refrained from mention of the dashed line in official statements.

In 2015, Taiwan further made clear that it claims that Itu Aba is an island that can sustain human habitation or economic life on its own, and therefore entitled to a 200-nautical mile exclusive economic zone (EEZ).

The day after the tribunal issued its decision, Taiwan sought to make a display of its “resolve in defending the national interest,” to use Taiwanese President Tsai Ing-wen’s words. It sent a warship to the area to patrol the region. A week later a group of lawmakers visited Itu Aba.

Such actions will only heighten already fraught tensions. But it doesn’t put Taiwan on the wrong side of the law. The tribunal didn’t rule on sovereignty over Itu Aba or any other feature in the South China Sea. And all user states, including their warships, enjoy innocent passage in a feature’s territorial sea.

More problematic was Taiwan’s statement immediately following the award decriing it as “completely unacceptable.” It also undermines Taipei’s efforts to carve out a position on the South China Sea that is distinct from Beijing’s. More fundamentally, it damages Taiwan’s reputation as a law-abiding member of international society.

Given that Taiwan wasn’t a party to the legal proceedings at The Hague, a mere statement that the award has “no binding force except between the parties” would have sufficed to express Taipei’s reservations.

Taiwan’s criticism that the tribunal overstepped its authority by ruling on the status of Itu Aba and other features not included in the Philippines’ original claim is unwarranted. The tribunal had to ascertain the status of the features and their maritime entitlements in order to determine if the court had jurisdiction to rule on the lawfulness of certain Chinese activities.

Taipei’s suggestion that its lack of formal participation in proceedings prejudiced its position is also uncalled for. The tribunal undertook an extensive examination of law and fact, including conducting its own exhaustive search of historical archives.

In addition, the tribunal carefully considered arguments and evidence that Taipei eventually made public. Taiwan had ample opportunity to put its best case forward for the tribunal’s consideration.

In future it is important for Taipei to ensure that its actions are consistent with the tribunal’s decision, even though it isn’t technically binding on Taiwan. Such a course wouldn’t require

Taiwan give up its claim to sovereignty over Itu Aba or any of the land features in the South China Sea.

It would, however, require that Taiwan desist from claiming an EEZ around Itu Aba or acting as if it is entitled to one. This means not fishing beyond 12 nautical miles of Itu Aba, or drilling or preventing the Philippines from drilling for oil around Reed Bank, which the tribunal determined falls within the Philippines' EEZ.

Ultimately, Taipei must ask itself if it is worthwhile to defend a position that is indefensible in law, and that might cause open conflict with other claimants and put Taiwan at odds with its principal ally, the U.S. It isn't too late for Taiwan to uphold its reputation as a supporter of international law. It is a reputation that has enabled Taiwan to navigate its precarious international position in the past and will help it do so into the future.

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