

By Invitation

Red Alert: A new geopolitical haze

Kishore Mahbubani For The Straits Times

🕒 PUBLISHED NOV 14, 2015, 5:00 AM SGT

It centres on the South China Sea, a prime example of why the US must lead by example in abiding by international law.

Something very dangerous has happened in our neighbourhood. The result may well be a new geopolitical haze over South-east Asia that could be more persistent and more painful than the physical haze we have experienced in recent months.

What is this dangerous event? On Oct 27, the US navy vessel Lassen sailed within 12 nautical miles of the reclaimed islands built by China over the previously submerged Subi Reef in the South China Sea to demonstrate physically that China is not allowed under international law to claim territorial waters around reefs.

China, however, insists that it has the right to claim 12 nautical miles of territorial waters adjacent to such submerged reefs. Hence, Chinese Foreign Ministry spokesman Hua Chunying has declared that if the US were to violate these claimed territorial waters, China would "firmly oppose infringement of sovereignty under that pretext".

In theory, this means that there is a possibility that China could very well shoot at an American ship or aircraft that does this. Both America and China don't want a direct military clash. Yet it could happen accidentally.

US Secretary of Defence Ashton Carter openly admitted on Nov 7 that he was worried about "the prospect of further militarisation, as well as the potential for these activities to increase the risk of miscalculation or conflict among claimant states". Nobody can predict what the consequences of such a military clash will be. We only know that the results will be catastrophic.

I have absolutely no doubt that the top leaders of Beijing and Washington DC want to avoid any kind of direct military confrontation. Both sides would lose. This was why despite the far greater

The Americans are right in insisting that China must abide by international law in its behaviour in the South China Sea. However, the way to persuade the Chinese to do so is not by sending American military vessels into the disputed waters. Instead, America should announce that it will now abide by all international laws when it comes to adjudication of territorial and maritime disputes.



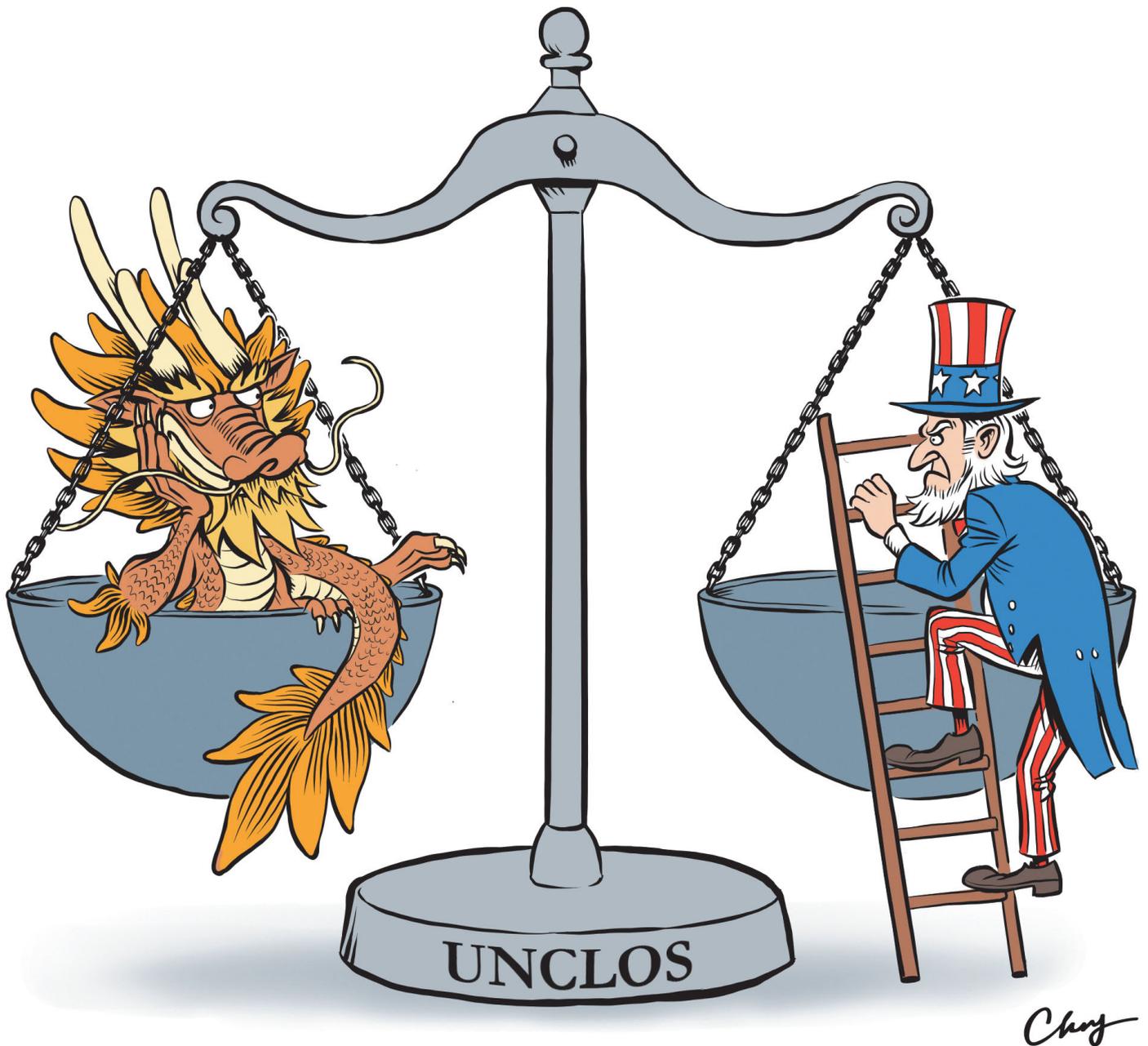
animosity and rivalry between the US and the Soviet Union in the Cold War, both sides carefully avoided any direct military confrontation.

Instead, both sides used proxies to undermine the other's power. Yet history teaches us that even though both Beijing and Washington DC clearly want to avoid direct military conflict, accidents could happen as a result of misjudgment.

The Americans are right in saying that under international law, China is not allowed to claim territorial waters around submerged reefs, even after these submerged reefs are reinforced with reclaimed islands. While the Americans are right in insisting that international law should prevail, the big question is whether the best way to promote international law is through unilateral dispatch of naval vessels or through force of example. The main theme of this article is that it may be wiser for America to try the latter approach.

As Indonesia's Coordinating Minister for Political, Legal and Security Affairs, Mr Luhut Pandjaitan said: "We disagree, we don't like any power projection. Have you ever heard of power projection solving problems? In Afghanistan? In Iraq? The United States has spent trillions of dollars in Afghanistan and Iraq. What are the results? Hundreds of thousands of people were killed. And now, violence continues to happen in Iraq."

The big danger of directly sending military vessels into these disputed waters is that America is also pushing China into a corner. If the Chinese government is seen to be weak in its response to new American naval manoeuvres, Chinese nationalism may erupt and force the government to react more forcefully. If this were to happen, this will create a major geopolitical haze over the region. All bets are off on how bad the consequences would be.



ST ILLUSTRATION: CHNG

International law is created and sustained by many multilateral organisations, including the United Nations. Hence, to emphasise that international law is paramount, America could table a resolution in the UN General Assembly saying that international law, especially the United Nations Convention of the Law of the Sea (Unclos), should prevail in the disputes in the South China Sea. The vast majority of UN member states would support such a resolution, sending a powerful signal to China.

However, to make this resolution credible, the US government must first persuade the US Senate to ratify Unclos. The US cannot call on China to respect a treaty that the US itself has not ratified.

It is true that successive US administrations have declared that they will abide by Unclos. State Department legal adviser William H. Taft IV told the Senate Foreign Relations Committee that "...US law and practice are already generally compatible with the convention".

Similarly, President Barack Obama said in a commencement address to graduates at the US Military Academy in West Point, New York on May 28 last year : "We cannot exempt ourselves from the rules that apply to everyone... We can't try to resolve problems in the South China Sea when we have refused to make sure that the Law of the Sea Convention is ratified by our United States Senate, despite the fact that our top military leaders say the treaty advances our national security. That's not leadership; that's retreat. That's not strength; that's weakness."

Similarly, many distinguished American secretaries of state, including Henry Kissinger, George Shultz, James Baker , Colin Powell and Condoleezza Rice, co-authored an article titled Time To Join The Law Of The Sea Treaty in the Wall Street Journal in 2012. Mr Bill Clinton and his wife Hillary have also said that they support Unclos ratification. All this is true. It is equally true that American credibility in pursuing a UN resolution on the South China Sea will be severely undermined by the Senate's refusal to ratify Unclos.

The issue here is not just Unclos. Overall, the record of the US on international law is highly ambiguous. On the one hand, there is no doubt that much of the corpus of international law is the result of Western laws and thinkers (including American thinkers).

In practice, the US abides by most international law provisions, including Unclos. Yet, the recent US track record on international law seems to be moving in a negative direction. For example, the US refuses to accept the jurisdiction of the International Court of Justice (ICJ), even though many disputing parties (like Malaysia and Singapore over Pedra Branca, and Malaysia and Indonesia over Ligitan and Sipadan) have turned to the ICJ to adjudicate disputes.

A US move to refer the South China Sea dispute to the ICJ would be a welcome move. To do so, the US must first reverse its decision to walk away from the ICJ. It first did so when Nicaragua tabled a case against the US in the ICJ. More recently, the then Secretary of State Condoleezza Rice wrote to UN Secretary-General Kofi Annan on March 7, 2005 to announce another withdrawal from ICJ jurisdiction: From the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes, done in Vienna on April 24, 1963.

Several leading American figures, including Mr Robert Zoellick, have called on China to emerge as a "responsible stakeholder" in the international system. The implicit assumption behind these calls is that the US has been a responsible stakeholder while China has not yet become one. This may well be true. However, we can only confirm this if some leading scholars of international relations and international law were to conduct an objective audit of the actual behaviour of the US and Chinese governments on the practice of international law. Only a serious study conducted with the best available social science research methodology can show whether the US or China has been more responsible overall.

American intellectuals and public officials are right in saying that China will be better off in emerging as a responsible stakeholder. However, the best way to persuade China to do so is not through American words. It has to be done through American deeds. This is why I wrote an entire book, *The Great Convergence*, to build on a piece of wisdom that former president Clinton shared with the American people in 2001.

This is what he said: "If you believe that maintaining power and control and absolute freedom of movement and sovereignty is important to your country's future, there's nothing inconsistent in that (the US continuing to behaving unilaterally).

"(The US is)the biggest, most powerful country in the world now. We've got the juice and we're going to use it... But if you believe that we should be trying to create a world with rules and partnerships and habits of behaviour that we would like to live in when we're no longer the military political economic superpower in the world, then you wouldn't do that. It just depends on what you believe."

If I had to use a simple and graphic metaphor to explain the core meaning of Mr Clinton's wise words, I would use the following to describe his message to the American people: "If we want China to put on the handcuffs of international law on itself, we must first apply the same handcuffs of international law on ourselves. Only after we have done so, can we ask the Chinese people to do the same."

In short, to conclude this article, the Americans are right in insisting that China must abide by international law in its behaviour in the South China Sea. However, the way to persuade the Chinese to do so is not by sending American military vessels into the disputed waters. Instead, America should announce that it will now abide by all international laws when it comes to adjudication of territorial and maritime disputes.

The result of such a dramatic announcement by the US is that instead of a geopolitical haze descending upon South-east Asia, we will see a new level of sunshine over the region. Such an announcement would put tremendous pressure on China to reciprocate this American gesture.

In Singapore, we got so used to sunshine that we thought little of it. Having experienced the haze for several months this year, we now wish that we could have taken some pre-emptive actions to prevent the physical haze from enveloping us. We should therefore learn a valuable lesson from the physical haze and take pre-emptive actions to prevent a new geopolitical haze from enveloping us.

•The writer is Dean of the Lee Kuan Yew School of Public Policy at the National University of Singapore, and is the author of *The Great Convergence: Asia, The West And The Logic Of One World*.