INTERNATIONAL LAW’S INTIMATE ANIMOSITY

Prabhakar Singh*

1. Introduction

In the 100 years between the Chinese Revolution (October 1911) and the Eurozone crises (October 2011), Europe and China have swapped positions: from a keen lender, Europe has become a desperate borrower of capital. This reversal in capital’s flow impacts and, indeed, reflects a change in the very nature of relationship between international law and the developing countries. What is more, this change also strikes at the root of the idea of sovereignty within international law. Notably, both, international law, and its core idea of ‘sovereignty’, were created via colonial expansions. Ironically, colonialism as imperialism continues to exist today, especially between the ‘First’ and ‘Third’ Worlds. However, the orthodox understanding of the First and the Third Worlds is set to change with the rise in capital of China, India, Brazil, South Africa, and other non-Western countries. In a way, international law and sovereignty are becoming increasingly useful for Third World scholars in two respects: firstly, because they allow a lens into understanding the

* President’s Graduate Fellow and Associate, Centre for International Law, Faculty of Law, National University of Singapore. Ph.D. Candidate (National University of Singapore), LL.M. (Universitat de Barcelona); B.A. LL.B. (Hons.), (National Law Institute University, Bhopal, India). I read this paper in the 3rd Biennial conference of the Asian Society of International Law, 27-28 August 2011, Beijing. I thank the Chinese organizers for funding my participation, and my fellow participants as well as the informed audience. Detailed comments from Ignacio de la Rasilla del Moral, Sonja Kübler and Benoît Mayer have helped the article immensely. However, the views are of the author’s alone. Email: <prabhakarsingh.adv@gmail.com>.
exploitive nature of contemporary international law, and secondly, because international law and sovereignty are sufficiently abstract to be used by Third World scholars to advance their new priorities. If we simply freeze international law in time, right now, Third World countries seek emancipatory struggles through international law while the laws of war and of international organizations still continue to be a high toast of Western countries. It is this nature of international law that this paper seeks to capture as intimate enemy.

Although, in its Article 1(1) the United Nations Charter seeks to “take effective collective measures” for the “suppression of acts of aggression or other breaches of the peace,”¹ the Security Council has nonetheless been busy blueprinting war plans. While on the one hand, NATO nations, standing true to the United Nations spirit of taking “effective collective measures” take pride in the invention of the responsibility to protect, in Guantánamo, and elsewhere, America is outsourcing torture and abuses of human rights primarily, to dodge legal volley and public protests that such an act will cause if done on the American soil.² Interestingly enough, as Koskenniemi remarks, when defending the NATO bombings of Serbia in 1999, while “American international relations analysts added footnotes to Hegel, Europeans fell back on Kant.”³ Little surprise then, that international law seems to find its home in a Hegelian-Kantian “Germanic language of universal reason.”⁴ About America, Žižek says,

The problem with today’s United States is not that it is a new global empire, but that, while pretending to be an empire, it continues to act as a nation-

⁴ Id.