

Foreword

The concept of the sovereign state which has its origin in the Peace of Westphalia was intended to solve a unique European conflict, the Thirty-Years War (1618-48). The Framers of Westphalia had no clue that this concept would become the legal framework for managing international relations for almost four hundred years. Although Westphalia solved one problem, religious conflict in Europe, it had many unintended consequences and may have created new problems as it evolved. Today the entire world is divided into sovereign states, except for a few remaining European and American colonies in the Caribbean and the Pacific.

The Framers of the Westphalian system did not anticipate the transformation of the international system or the issues that would transcend the borders of states. They invented a system that was selfish and limited in focus. Westphalia concentrated all the powers of the sovereign in the hands of a single ruler. It gave limited rights to individuals within the sovereign state and assumed the ruler of each state would decide what rights their citizens should be entitled to. Nor did Westphalia establish a system that would be capable of addressing the many challenges confronting humanity today. Many of these challenges, climate change, pandemics, natural disasters, wars, food insecurity, systemic human rights violations, political repression, systemic corruption, mass migration, global inequity, abject poverty, failed states, terrorism, technology, and transnational criminal activities, would evade the guardrails of sovereignty and directly affect people regardless of where they live. These challenges do not recognize sovereignty or borders; they are global in scope and dimension. No one state can solve them alone. Yet, the Westphalian model continues to permeate how we see the world, hence creating an obstacle to collective action.

The concept of the sovereign state is still very popular among developing countries, China, Russia, and the US. However, its inability to address global challenges makes it irrelevant. We need a paradigm for conceptualizing the world, and the quicker we do so the easier it will become for us to address these pressing global challenges that have serious implications for humanity.

International law and international institutions have played a critical role in mitigating the unintended consequences of anarchy and state sovereignty, but they are limited in what they can do given the international system is still dominated by states, and states have absolute authority over both their internal and external

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affairs. States must relinquish their absolute authority in order for international law and international institutions to be able to tackle global challenges head-on. Whereas current international institutions have proven incapable of addressing these challenges, creating new institutions will prove difficult given how unwilling some nations are to give up some of their sovereignty. The lack of global leadership due in part to the poor quality of today's leaders is a contributing factor to the dilemma we face as a global community. Meanwhile, these challenges continue to impact more and more people, and the world stands by being unable to take greater collective action in response to these challenges. Hence the need for a dialogue on how to reform global governance to make it more effective in response to the needs of humanity. The international community needs to focus on the best ways to improve the human condition by putting humanity at the core of any global governance reform.

The following lectures will shed light on a few of the global challenges confronting humanity at present and into the foreseeable future. The lectures should serve as a call for action and a need to keep alive the spirit of President Vaclav Havel, who worked tirelessly to improve the human condition globally.

I want to thank the many people who have been so helpful to me during my many visits and stay in the Czech Republic. I am honored to call them my dearest friends and colleagues: Professor Pavel Šturma, Professor Karel Beran, Professor Veronika Bilková of Charles University Faculty of Law, Professor Dušan Drbohlav, Charles University Faculty of Natural Sciences, and Professor Jilek, Faculty of Law, Masaryk University. Special thank you to my colleagues at UNYP/ESU: Oscar Hidalgo, Tanweer Ali, Todd Nesbitt, Sheila Aird, Evelyn Wells, and David Starr-Glass. I am also grateful to my many students and friends: Lenka Milkulcová, Jitka Ivanciková, Slavek Suchman, Lenka Hemmerová, Daniel Fridel, Jana Sehnalková, Marcel Kaba, and many others too numerous to mention. Finally, I would like to thank Erik Black and the staff in the Public Diplomacy Section of the US Embassy, Prague.

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Introduction:

Global Challenges at the End of the Cold War:

A Personal Account of the Czech Republic

I first visited the Czech Republic in 1991, following the fall of the Berlin Wall and the unraveling of the Communist bloc. Like many political scientists at the time who had spent their academic careers theorizing about the end of the Cold War or a potential nuclear war between the two superpowers, the end of Communism, peacefully, was a triumph of good over evil. It ushered in a new era in international relations and the beginning of something many of us did not anticipate. My journey to the Czech Republic, at the time still Czechoslovakia, began in the Hague where I was working on a manuscript on the International Court of Justice (ICJ) handling of the dispute between Nicaragua and the United States (*Military & Paramilitary Activities in and Against Nicaragua*). I was excited to travel to Prague and Berlin to see first-hand the old Soviet bloc and how the new states were transitioning from Communism to liberal democracy. A period of chaos and uncertainty ensued but many of the new leaders such as Vaclav Havel, and Lech Walesa were determined to implement the ideals they held during the struggle with the Communist regimes in their countries. These young leaders make enormous sacrifices for their cause, and many of them went to prison or ended up unemployed and unable to live decent lives.

My journey to Prague would take me to Frankfurt, Germany where I hiked a ride with a Czech dissident returning to visit his family for the first time since he defected many years ago. We could not communicate as neither of us spoke a common language. However, like all human beings who find themselves in awkward situations, would find a way to get our message across through signs. My driver was a chain smoker and drove at high speed on the German autobahn. I was terrified being with a stranger driving at a speed of 120 kilometers per hour, and I was getting sick from his cigarettes which he continued to smoke until we arrived in Prague. Upon arrival in Prague, my driver invited me to meet his brother and family. I got the impression they had never met a black person but given the euphoria of the moment, they suggested I stay with them overnight, which I did. My driver's nephew, David, took me on a night tour of Prague and the next morning asked if I would feel comfortable staying in the house alone until

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he returned from his weekend military duties. I agreed and on Sunday evening the entire family returned to meet their new house guest all alone in their home. David's mom was very pleasant. She cooked dinner and asked me many questions about the US, my impression of her country, and my reasons for wanting to visit. It was a great evening. My experience with the driver's family made a huge impression and I promised them I would return to the Czech Republic. Wherever I went in the Czech Republic people were friendly and welcoming. For the first time being black meant something. People wanted to take photos with me as proof they had met a black person. People from all over the world, especially, Americans were converging on Prague to experience this beautiful city; its art, architecture, beautiful skyline, and above all, to be in a country led by a dissident and playwright. Prague had very few restaurants or stores and was still very much in a Communist state of mind. But the spirit of the people was very high, and they had a leader, Vaclav Havel, whom they trusted to lead their country in a new direction. The Czech people I spoke with were optimistic about the future of their country. They were eager to visit the West and meet people from other parts of the world.

After a week in Prague, I left for Vienna and then from there, I took an overnight train to Berlin. Prague left an indelible mark on me, and I vowed to return the following year.

Berlin was another intriguing experience. Having read so much about Berlin as the East-West divide, I was curious about what to expect in Berlin, especially East Berlin. I was meeting a friend from West Berlin whom I had worked with in New York, so I expected my experience to be more in-depth, given Frank was a Berlin native and studied International Relations. I got a complete historical overview of Berlin and how people coped during the years of living behind the Berlin Wall. The Wall was a relic of the past but there were pieces of it everywhere as a reminder of what transpired in this historic city. It was sad to witness some of the sites where people died seeking freedom and to hear people's stories about life under Communism. Despite these horror stories, Berliners were excited about the reunification of their city and there were signs everywhere that life was getting back to normal as quickly as could possibly be given the enormous task ahead for the government of West Germany in rebuilding Berlin, moving the capital from Bonn, and the difficulty of people from both sides of the Wall adjusting to living side by side as Germans. It was a difficult time for the Easterners, particularly pensioners, who felt devalued in this transformation from Communism to Capitalism. However, young Germans embraced the change and moved westward to seek better opportunities.

In the next decade, I would return to Central Europe many times. In 2000, I accepted a Fulbright Professorship to teach at Charles University Faculty of Law in Prague. It was a dream come true. I was excited to be embarking on a new academic journey with my family to start a new life in a formerly Communist country. I was well received by faculty and students at the Law Faculty. My courses were taught in English, so only students who were fluent in the language were allowed to enroll. I had some great students, and 20 years later I am still in contact with several of them. Many of them are now successful lawyers, professors, or government officials. While teaching in Prague I accepted an offer to teach a two-week intensive seminar at Central European University (CEU) in Budapest. That experience was equally rewarding. I taught some of the best and brightest students from the former Soviet bloc countries at CEU. Upon returning to the US, I accepted an offer from Empire State College to be a mentor in their Prague program with the University of New York Prague (UNYP). That made it possible for me to visit Prague three times a year to work with students who were receiving an American degree in Prague. I have been with the program for the past 22 years. It has been a great experience working with students of diverse backgrounds and experiences. For the 2023-24 academic year I will return to Prague as a Visiting Professor of Public International Law at Charles University Faculty of Law where I initially started my academic career in Prague. I look forward to returning to Prague and working with the next generation of Czech leaders.

It has been a remarkable journey ever since I first hitchhiked my way from Frankfurt to Prague 22 years ago. The Czech Republic is like my second home. The friends and acquaintances I have made in Prague remain my best friends. I am grateful for all those who have inspired me on this journey and those who have made it all possible for me to continue sharing my knowledge with the future generation of leaders of Central and Eastern Europe.

I left Prague in February 2020 with the intention of returning in two weeks. However, on arrival at Detroit Fort Wayne Airport, I was confronted with a new reality. Thousands of people arriving from Asia were wearing surgical masks as protection from a virus the world had very little information about except it originated in China and was very deadly. Within weeks the world's borders were closed and I was unable to return to Europe until three years later. My visit to Prague opened my eyes to the impact COVID-19 had on the economy of the Czech Republic, and Prague in particular. Many hotels and restaurants were permanently closed due to a shortage of visitors, and many more auxiliary businesses that depend on the hospitality industry were affected as well. Although visitors have begun to return to Prague, it will take some time for the economy to fully recover and for the cost of living to come down. I witnessed a large anti-government demonstration that

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was in response to rising inflation caused by the war in Ukraine and the lingering effects of COVID-19.

Below you will find a series of lectures I delivered in the Czech Republic on my recent visit and two previous lectures prior to the COVID-19 outbreak. Given how much I was inspired by the convictions of President Vaclav Havel, I decided to dedicate these lectures to him and his legacy. I have also included a chapter on Dictatorial Regimes to imagine what President Havel would have thought about the growing trend toward authoritarian regimes, the state of human rights in the world, and the erosion of democracy and the rule of law in many countries, including neighboring Hungary and Poland. President Havel would have been appalled at the reversal of the gains made in the immediate post-Cold War era and the resurgence of dictatorial regimes led by Russia and China. I think President Havel would have been shocked to see the January 6th attack by Trump supporters on the US Capitol, Russia's unprovoked invasion of Ukraine, the refugee crisis in Europe, and the rise of populist regimes in Europe in response. I hope you will find inspiration in these lectures and the drive to do something to improve the human condition globally.

The global community faces serious challenges that no one state can solve alone. The end of the bipolar world and the demise of Communism was supposed to usher in a new spirit of multilateral cooperation in which all nations would work together to end wars, and tackle pressing economic and social issues impacting humanity. However, that spirit of optimism was short-lived. The US invaded Panama to remove Noriega from office and have him extradited to the US to face trial on drug trafficking charges. Noriega was later convicted and served several years in prison in the US. He was later extradited to France to face money laundering charges. He was also convicted and sentenced to several years in prison. In 1990 Iraq invaded and annexed Kuwait. The US was able to rally members of the UN Security Council to condemn Iraq's invasion and to authorize military force against Iraq. There was tremendous hope for great power cooperation in the Security Council following the Iraq war. The Security Council resolved several longstanding regional conflicts, some proxy wars that were supported by the US and USSR. In the decade of the 1990s, the world witnessed the UN functioning like it was supposed to. Bush such hopes were dashed following the September 11th terrorist attacks, the US invasion of Afghanistan, and the US/UK invasion of Iraq in 2003.

The end of the Cold War also led to some of the worst ethnic and religious conflicts in the Balkans and in Africa. The Bosnia and Rwanda genocides were notorious for the scale of the barbarism against innocent civilians. Other regions experienced violence and political instability. Several states failed, including Somalia, Haiti, Liberia, DRC, and Sierra Leone. International tribunals were estab-

lished to prosecute those who were responsible for genocide, war crimes, and crimes against humanity. The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), established by the Security Council, did outstanding work to end the culture of impunity and to hold high-ranking government and military officials to account for the involvement in such crimes. For the first time since Nuremberg, the international community demonstrated the political will to hold state and non-state actors accountable for serious human rights abuse. The success of these two ad hoc tribunals provided the impetus for the creation of the International Criminal Court (ICC). However, progress toward accountability for atrocity crimes and global justice has been slow and partial. Many of the people convicted of international crimes have been leaders from developing countries. No American or EU national has been charged and convicted of international crimes. Although the ICC indicted Russian President Vladimir Putin recently, no one expects the same will happen to George Bush or Tony Blair. Havel would not have been happy about the state of international affairs today. Russia's invasion of Ukraine has taken to the world back to the dark day of the Cold War and put humanity on the brink of a nuclear war.

Russia's invasion of Ukraine has upended the international legal order and made people more skeptical of the role of international law in holding those who defy the law accountable. However, despite the inability of international law to prevent states from going to war, its continuing relevance is uncontested, for the alternative is a return to great power rivalry, the colonial era, and growing authoritarianism.

Global challenges such as climate change, pandemics, food insecurity, natural disasters, internal armed conflicts, terrorism, religious extremism, mass migration, extreme poverty, global inequity, human rights abuse, and the emergence of authoritarian regimes, all threaten to make life extremely difficult for billions of people around the world. It is incumbent on world leaders to realize that these challenges cannot be resolved through the obsolete concept of state sovereignty. We need to reimagine global governance and create new legal frameworks to address these human challenges. These problems do not know borders and they do not discriminate against their targets. Therefore, a post-sovereignty legal order is necessary if we are to address current and future human challenges. The lectures below will shed light on some of the global challenges and the complexity of changing the current mindset.

How International Law and Human Rights Inspired
the Velvet Revolution:
A Tribute to President Vaclav Havel

BY

PROFESSOR MAX HILAIRE, Ph.D.

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How International Law and Human Rights Inspired the Velvet Revolution

This lecture will address how international law and human rights inspired the Velvet Revolution and changed the world for the better. It is also about how one changes an oppressive regime from within by using law and not war. I will also pay tribute to the leader of the movement, President Vaclav Havel, whose vision for world peace I have embraced.

It is indeed a pleasure and privilege to be selected to deliver this important lecture on a topic so dear to my heart and so important, given the current trends in the Czech Republic, in Central Europe and the world in general. It is equally important to pay tribute to President Vaclav Havel, a great Czech who cared so much about his country and the world. In May I watched as thousands of people took to the streets to protest the situation in the Czech Republic. It looked like we were re-litigating issues that should have been settled in 1989: respect for the rule of law, democracy, accountability, transparency, good governance, and respect for human rights. What Havel and the members of Charter 77 stood for and fought for appears to be eroding. And incidentally, this erosion is not unique to the Czech Republic but also to Hungary, Italy, Poland, the United Kingdom, the United States, and a host of other countries around the world. In fact, if Havel were alive today, he would have been appalled at the current state of affairs in the world.

Today we see several governments retreating from the rule of law, democracy, and human rights, especially those that previously benefitted from human rights. These regimes are now least inclined to grant sanctuary to the victims of human rights abuse. Those who advocated for the rule of law and democracy are now the chair leaders of authoritarian rulers. The strong advocates of universal human rights norms are now abusers of human rights. Today there is a strong sentiment against respect for the rule of law in international affairs, and the protection of human rights is no longer a top priority. It was not the intent of the framers of the Peace of Westphalia for governments to commit extra-judicial killings, torture, and forced disappearance with impunity. It is not okay for governments to commit atrocities against their citizens, to detain people without charge or trial, to prevent their citizens from participating in the political process, or to suppress their views. It is also not okay for governments to detain foreigners fleeing violence, to detain children, or to separate them from their families; above all, to deny people who have a legitimate fear of persecution from seeking asylum in another country. The Velvet Revolution was an attempt to curtail the excesses of the state and to establish a more just and fair society. However, thirty years later the world is still dealing with some of the same issues I have articulated above.

I am sure many of you in the audience are skeptical about international law and are wondering what I could possibly say about international law that would per-

suade you to think otherwise. For the average person international law has no relevance to their everyday lives, and it had no impact on the Velvet Revolution. Even some of the leaders of the Velvet Revolution may not have fully grasped the influence of international law on their actions. Many of the leaders of the movement may have decried international law for protecting the communist regime. They may have felt international law did not grant greater protection to them in their struggle against a totalitarian regime that was in breach of many of the fundamental principles of international law such as the right to free speech, assembly, due process, fair trial, protection against arbitrary arrest and detention, to participate freely in their government, and freedom of conscience; rights enshrined in the Universal Declaration of Human Rights and other regional human rights instruments.

Despite its shortcomings, Havel and his associates never gave up on international law, because to them that was all they had. Although customary international law gave precedent to state sovereignty over human rights, it was international law that made it possible for the Velvet Revolution to succeed. The Velvet Revolution needed a justification to challenge the authority of the communist regime, which they found in international law, particularly in human rights law. They also needed international support after the revolution in order to gain recognition of the new government in Prague.

The international law of the Westphalia era was a states-based legal order. Except for calling for the protection of minority religions, and the right to self-determination, it gave no rights to individuals. How states treated their citizens was an internal matter. The international law of Westphalia had at its core the principles of sovereign equality of states and nonintervention in the internal and external affairs of other sovereign states. Until the end of World War II, international law provided no protection to individuals, except to a limited extent during the war. However, following World War II, the framers of the post-war order made sure human rights were featured prominently. At the center of this new order was the United Nations. Several articles of the Charter, including Articles 1, 13, 55, and 62, speak to human rights and the progressive development of international law. These provisions of the Charter, coupled with new human rights declarations and conventions adopted by the United Nations General Assembly transformed the international system by elevating the status of human rights. The individual went from being an object to a subject of international law.

The Cold War made it impossible for all people to fully realize their human rights. It also led to a period of severe repression in Central and Eastern Europe, in which human rights were restricted. Communist ideology took precedence over human rights and the rule of law. People were persecuted for their religious and politi-