REVISITING THE RESPONSIBILITY TO PROTECT

Allan Gotlieb, Chair

We have a very interesting agenda and I should just mention one or two changes in the list of participants that you have.

Bill Graham, a distinguished professor of international law as well as a former foreign minister, has been added to the panel. Carlos Heredia is replacing Jorge Navarette. We're very glad the two of you could be here and participate. I think we should move directly into our discussion.

We're delighted that Lloyd Axworthy could accept our invitation to lead off on our panel on the responsibility to protect. Lloyd is one of the creators of this doctrine, one of the originators, along with some other cooperative Canadians, and it is indeed an achievement of great significance because this doctrine of the Responsibility to Protect is a very far reaching one.

It is new. It suggests changes in basic notions of sovereignty. It is, without doubt, evolving and it is, in many ways, a very progressive notion, concept, but one that raises many issues and areas of concern.

I personally think it's one of the most important developments in the area of international law and relations in our times and it has far-reaching implications. So I'm going to ask you to lead off, Lloyd.

I just throw out, if I can take my chairman's prerogative, a few observations, which you, as panelists, may want to refer to, or ignore, or disagree, or forget about it, but I think I just put it into the debate. And that is, I think there are three. One is, can we implement the doctrine of Responsibility to Protect? Can we implement the notion that states have obligations towards their citizens and if they don't carry them out in a certain manner, if they violate basic principles of humanity, this can justify an intervention on the part of the international community?

One of the biggest issues, it seems to me, is can this be done without acknowledging and recognizing the inevitability and the necessity of regime change, because if you don't change the regime you can't leave?

You've got to overthrow the regime because if you leave it, the victims will be even more exposed. So, ultimately, this doctrine, I think, is related to regime change, and as we've seen in the Libyan experience, the Responsibility to Protect ends up requiring a change in government. That's one issue, it seems to me, and that is an issue that is quite tricky because in the Iraq context, many justifications were used to intervene, but one of them was certainly the notion that you needed to get rid of the regime.

A second area, I think, that is contentious is selectivity. Why Libya, why not Syria? To put it in its most elemental sense, how do you justify, and if you can't justify dealing with one country rather than another, is this so arbitrary that it terminally hinders the doctrine, or is it something we simply have to take into account?

The third area, and it comes from your paper in particular, Lloyd, if this is an emerging rule of international law, if it becomes or is a rule of international law, then states have to abide by it. If the Security Council doesn't authorize it, that doesn't change international law. The duty is on the part of states, and if the duty is there, the failure of an international organization to act does not terminate, or defeat, the notion that it's
an international obligation and there is a duty to act. That brings one into multi-lateral groups who might feel they're required by international law to intervene, even without UN sanction, as was in the case of Kosovo.

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