I don’t know if I have any deep observations. Allan, when you asked me to join the panel it was thought that perhaps we wouldn’t have a Mexican representative, but Carlos has come in well.

Let me just share with you a couple of personal reflections about how I got involved, specifically, in this issue when I inherited the Foreign Ministry portfolio from Lloyd, with John Manley in-between us.

I know John probably would speak to some of this too, but I would have said — Carlos, if you hadn’t made your point — that when I raised the discussion of this matter with Jorge Castaneda, who was my counterpart at the time, his first reaction was, but protect against whom?

There was a sense, as you say, of Mexican history that immediately arose. I bring that up as a bit of a joke, but it does go back to the selling of this idea. Lloyd, you composed the panel, as you said, in a way to give it legitimacy and universality so that the recommendations came from a broad spectrum of the international community.

But it must be said that when the proposal first came out, there was a great deal of resistance in the international community, particularly in Latin America and in Asia, where interventions, and experience with interventions, tended to be, well, the big guys intervening.

The Kosovo experience, you’ll recall, was really the birthplace of many of the rationalities about whether this could become an international legal doctrine. For those who are not lawyers in the room, I think it’s pretty well accepted in international law that the intervention in Kosovo was illegal but legitimate, meaning we couldn’t get away with pleading that in a local court for justifying a crime, but under international law you can get away with a lot of things that you don’t get away with in domestic courts.

For that reason, for example, in the House of Commons committee at that time, we asked for a legal opinion at the time of Kosovo. There were four international law lawyers on our House of Commons committee, and we were always rather struck by the fact that the legal opinion never actually seemed to come. It could never get to the committee somehow from down in the Pearson Building. I think the legal opinion was there, it was just clearly that the intervention was illegal and nobody was going to say that in the House of Commons at that particular moment.

When I personally got involved, it was precisely because Kofi Annan came to me as the Canadian foreign minister, after Iraq. The legitimacy and role of the United Nations had taken a hit, and I think Kofi was very strongly wanting to reaffirm the role of the United Nations. He saw it as a way of reaffirming the role of the United Nations.

I think that’s the seed of one of the paradoxes of the doctrine because, in order to give it legitimacy precisely, you had to give authority to authorize an intervention to the accepted international instrument, which happens to be the Security Council, which, of course, didn’t give the authority in the case of Kosovo.

I think that’s one of the inherent issues that we have to deal with as we go forward, and I think that was certainly the position that Kofi had at that time. Then, of course, as you say, Lloyd, he is a strong
proponent of the doctrine and has made a case of saying that his intervention in Kenya was an application of the doctrine.

I think that's extremely important because, certainly with students and most discussions around the issue, we always talk about the dramatic side end of it. It's the military interventions we're always talking about and arguing about, but there's a whole gamut of earlier interventions in the form of diplomacy and sanctions, and others that Lloyd mentioned, which don't require the same degree of international sanction, if you like. Perhaps you don't need a Security Council Resolution to justify these less coercive measures.

It's the use of force which becomes the trickiest bit. And the closer you get to using force, the closer you get to having to have a generally and universally acceptable international instrument that allows you to do it, otherwise it's just coalition of the willing, and it's just gunboat diplomacy, and all those things.

So we did try and sell R2P, and I think it was amazing. Colin Powell used to tease me, as I often carried the books around with me, and we'd go to ASEAN meetings, and I'd put one on everybody's chair, and he'd say, “What are you doing, Professor?” (He used to call me Professor.) I'd say, “Well, we've got the ICISS Report. We want everybody to read this thing.” And, fortunately, in those days the foreign minister of Singapore was a former dean of a law school and the foreign minister of Thailand was a law professor too, and they supported me. And gradually, as Lloyd pointed out, this doctrine has evolved. I mean, in ten years, this is remarkable.

For those of you not familiar with how international law evolves, if you ever read what the International Legal Commission does, they're still arguing from 1905 to now over doctrines that never seem to get anywhere. And in ten years, this doctrine has gone from a theory to where Prime Minister Cameron, in announcing the intervention in Libya said that “this is the necessary thing to do, this is the right thing to do, and this is the legal thing to do”: “legal.” Everybody who said they were going to Libya said this was an internationally legally sanctioned matter.

Now, as Professor Kennedy at Harvard Law School has said, why is that important? I think he makes a very good point, that legal terminology is now a part of the vocabulary for the politics of armed conflict. Law has now become a mark of legitimacy and legitimacy has become the currency of power.

So the need to make this into a legal doctrine is quite important. I think, for those who want to see it succeed, but it does have the inherent problems that international lawyers point out. For example, the former president of the American Society of International Law is strongly of the view that, because of the inconsistency and incoherence that Carlos mentioned, it has not become a legal doctrine. There’s also the selectivity: the question is why Libya, why not Syria?

Well, Lloyd, you may recall in terms of Kosovo, I was kind of a chipper president on the committee, and I said to you, well “Okay, Lloyd, we're going to Kosovo, but what about Chechnya?” And you just looked at me and said, “But the Russians have nuclear weapons.”

There's a certain degree of realpolitik, and so that's why I think we go back to your point that this is very difficult to lay down as a general principle which is then going to be applied holus-bolus, because you're going to get yourself into some very serious problems.

I'll leave it there, but I'll leave it with the problem, perhaps, with the international law concept that for those of us who want to cloak our actions in the terms of legitimacy, let's not forget that international legal issues are argued by legal advisors and everybody uses the same terminology. You may recall that when the Russians went into Georgia, they used the language of R2P. They absolutely cloaked their intervention in all the language of R2P.

To take this back to Lloyd's point, I think this is an extraordinary doctrine. It's achieved extraordinary success and use in international law. It really has turned the Westphalian notion of sovereignty
on its head, but we're a long way from having refined its application and its understanding of how to apply it in a way that'll make the world a more secure place, which was its purpose in the beginning.

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