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Transcript Q&A

Responding to Mass Atrocity Crimes: The 'Responsibility to Protect' After Libya

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Elizabeth Wilmshurst:

Thank you very much indeed for that. I am almost stunned with no questions in my mind anymore but let's begin.

Question 1:

You describe the responsibility to protect as the new international norm with the first principle in protecting as promoting structural reform. Looking specifically at the British response to that new norm, could this have been made manifest in the coalition's own thinking by ring-fencing the international aid budget under Andrew Mitchell MP?

And a second question, you spoke of the necessity within that new framework to have the capacity to robustly respond to unexpected situations and then you went on to describe a number of architectural shifts occurring within the military hardware configuration in the US but on this side of the Atlantic it was Bernard Jenkins MP in conjunction with the Henry Jackson Society recently who argued that the Strategic Defence Review of [inaudible] of a military with a global reach and a capacity to respond to those strategic shifts if it is our obligation to protect and the military intervention becomes necessary.

Gareth Evans:

The first point I think is the British government is serious about the responsibility to protect and also it's serious in its understanding that it is a multi-dimensional response that's required and part of the deal is long-term structural prevention both before critical situations erupt and indeed after it in terms of the post crisis response, to ensure that the whole ugly cycle doesn't start again. And I think Andrew Mitchell and others in DFID [inaudible] and the government as a whole are very conscious of the utility and relevance of the aid budget in this respect and indeed a little organization in New York called The Global Centre for Responsibility to Protect which gets support from DFID, which I hope will continue in the period ahead simply because the aid establishment here does see the relevance of that to the specific objectives we're talking about.

I was tending to focus on some of the shorter term preventive responses and reactive responses but the longer term structural stuff is very important.

In terms of military configurations, this is an issue for every army in the world as to whether they've got it right in terms of having just the sufficient capacity overall to do the different kinds of things that militaries these days may be

called upon to do and in particular whether they've got the right configurations to do the very specific [inaudible] jobs that are involved in the classic responsibility to protect cases, the kind of intervention that we all hoped would have occurred for example in Rwanda where Roméo Dallaire, the Canadian General famously said that had we had 5,000 troops in there quickly we could have saved 800,000 lives and I think he was right.

But that requires a certain sort of skill-set, not only configuration and the logistics that go with that but it's a kind of doctrine and training and rules of engagement approach which recognizes that these civilian protection tasks require not just the traditional go in and bang sort of kinetic skills that militaries love, it's a lot more nuanced than that, and how much progress has really been made in this direction in the British military and others in Europe as distinct from just talking and talk about it I'm not entirely sure. I think that's part of the work ahead.

Question 2:

I was recently at an African Union meeting in Cairo where the Libya experience was put under the microscope by representatives from the African Union and produced a lot of outrage summarized in the idea that NATO had hijacked the Security Council to invade our continent, a particular outrage against the two African countries who were members of the Security Council that endorsed Resolution 1973. Where in your mind do the regional international institutions stand in the international architecture that you envisage supporting this concept?

Gareth Evans:

Well the first response is the African Union hasn't covered itself with glory in the Libyan case. The Arab League had some African countries at risk too in this enterprise and had a very different approach collectively as to what was going on in Libya.

The cynics among us would say that these differential reactions had a hell of a lot to do with the reality that a large number of African countries in the AU were being significantly supported by Gaddafi financially. Currently, there's also the emotional attachment which is certainly alive and well in South Africa that Gaddafi's Libya was a main support during the ugly dark apartheid years and Mandela himself has a huge strange emotional attachment to Gaddafi which has flowed through.

There's a lot of grounds for, I think, scepticism about the objectivity of that response, particularly when you think back over the history of the responsibility to protect evolution as a doctrine in which Sub-Saharan Africans were tremendously important in ensuring the passage as John Dauth, the Australian High Commissioner here who was one of the key sherpas for the 2005 Summit will tell us.

The African enthusiasm for this for what they called – forget about non-intervention – what they were concerned about was indifference. They wanted non-indifference to be established and the African voice was fantastically important and the African Union in fact jumped ahead of – we didn't fully acknowledge it in the original report – but the debates they were having about the legitimacy of physical intervention, not just diplomatic intervention but physical intervention in extreme cases of this kind were alive and well and is still alive and well in the African continent and still there's mainstream support.

The Gaddafi case, the Libya case, was a very, very specific combination of circumstances. You could also say there are some other factors at work in the Arab League response other than disinterested support for their brethren at risk. There was the distaste that a number of them had for Gaddafi not least because he tried to kill a few of them over the period, and Saudis in particular had strong views on this subject, so they are very happy to see him go.

The bottom line in all of this is that for all the vagaries of the political response in particular cases for particular reasons it's critically important that the regional organizations be major players on this responsibility to protect stuff.

Over and over again the principle of subsidiarity – awful word – but it's becoming just more relevant to the way in which we handle security issues as well as economic ones because the truth is is that the neighbours have the bigger stake by and large in getting these situations right. There are often spill-over effects in terms of refugee outflows and just stresses and strains on the neighbourhood and in particular the West Africans through ECOWAS and ECOMOG have shown a real willingness to get on with the job of addressing these situations, not always with maximum efficiency but certainly with pretty great enthusiasm.

The trouble with regional organizations as you look at them around the world is they are a very mixed bag indeed and most of them are not very effective, to put it as diplomatically as I can, and I think it is an important part of the build-up of this concept and quite a few other things in international discourse

at the moment to give strength to those organizations and that ought to be a pretty high policy priority for all of us.

Elizabeth Wilmshurst:

The African Union have actually got the principle of humanitarian intervention haven't they in their constitution?

Gareth Evans:

Yes, it's in the AU's Charter.

Question 3:

I'm not a spoiler, to use your language, but I am a sceptic and one of the reasons I think is that while you and others deserve a great deal of credit for putting this idea on the agenda, it seems to me that you can't really separate the conceptual from the institutional in the way that you did. The minute you talk about responsibility to protect there is then a grey area as to whether it means regime change and unless you can resolve the institutional question, it seems to me that one will always lapse into the other.

I mean NATO is obviously a big problem but imagine that the Security Council Resolution was passed in relation to a country on the border of Russia or China that would authorize Russian forces or Chinese forces to go in. We'd have exactly the same problem.

I just don't see how you can really be so confident about the conceptual while there's still such confusion about the institutional. It's a great idea but I just think it may have peaked too soon.

Gareth Evans:

If you're a realist by disposition you're always going to be sceptical about the way in which values will translate into delivery through the real pathetic world of institutional inadequacy and politics and everything else.

We've just got to try and I think that the significance of the conceptual stuff is that it's not a sufficient condition for getting the rest of the stuff right but it's sure as hell a necessary condition because unless you've got the basic mindset going you don't even get to first base and that's what the testimony of the 1990s is about.

We had a shocking abdication of any kind of moral responsibility and those outcomes in the 1990s. After all the experience of Cambodia and everything else going back to the Holocaust, the fact that we just stood by and let it all happen.

And the core reason there is you didn't even get to the point of testing your institutional responses for the most part because there was just no meeting of the minds by anyone that this was a problem that demanded some kind of response. The big shift that's taken place – and it really is a pretty big shift normatively in the history of ideas, whether Martin Gilbert was right in saying it's the biggest thing in 360 years is another question but it's big – I am the first to acknowledge that there's still a long, long list of institutional and implementation things that we've got to get right but I have to say, even though Syria has gone wrong, Libya went right.

Let's just remember the scale of the achievement, unless you're the kind of sceptic that says that Benghazi wasn't going to happen or the kind of cynic that said: Well there might have been 1,000 or 2,000 people were going to get killed but in the scale of things does that count as a mass atrocity crime – but unless you're of that cast of mind, it was really, really going to be a horrible situation, certainly reminiscent of those 1990s ones and we got it right.

Okay, there might have been a degree of NATO overreach and that might have now made life difficult for the future but instead of saying: Oh hell, that's the world that we're in and you're never going to get these characters marching with any kind of effectiveness and decency on these matters because that's what institutions are like, that's what the world [inaudible]; instead of saying that, let's just be a little bit more optimistic and let's start grinding away.

Again, let's go back to the conceptual drawing board. This is the point of the second part of my presentation, maybe let's take this as a case for saying we've got to get a much better debate going about what criteria you have to satisfy before you go down the military route rather than just assuming that there's always going to be enthusiastic marines out there and careful sceptics elsewhere.

Let's just find some common ground on that issue and I think those criteria are the way to do it. It's going to be a long haul but let's just remember how far we've come already and how we're doing on this and keep a bit of optimism.

Question 4:

I want to come back to some of the conceptual issues that you were talking about and I would like to use Syria as a reference point and by and large I take and accept your analysis on Libya and also your analysis on Syria in that these kind of principles of legitimacy have to be engaged before you can resort to force are not really clearly met.

I want you to perhaps talk a little bit about this norm of complicity which is also emerging in international law. Syria's neighbours – as you say, the region matters – and Syria's neighbours can play a deeply malignant role as the conflict there continues to entrench and I'm wondering do you see any movement to start holding neighbouring countries accountable for their interference by funding proxy armies in the kinds of ways that you saw in Lebanon or in Iraq that fuelled much greater atrocity in the country? Could you perhaps comment on that.

Gareth Evans:

That's an interesting question and it's not one that I'm professionally very equipped to deal with because I hadn't been aware of any debate going about international law circles – and maybe Elizabeth is a much better person to comment on that, one if you'd like to Elizabeth, take it from me – because why not, we apply all sorts of other domestic law principles to international conduct and properly and rightly so?

The concept of complicity is really quite an interesting one I guess in this context but it's a new idea for me to think about and I'm afraid I've got nothing useful to say in response [inaudible].

Elizabeth Wilmshurst:

International law certainly, as I'm sure you know, has lots of things to say about international responsibility, the responsibility of states and also international criminal law has things to say but I think we're a little bit outside the area of responsibility to protect but it's an interesting link.

Question 5:

What do you think would be the role of Russia and China in the future? Are they going to be willing to implement the concept in its core essence to really

protect others or are we just going to continue the current situation of trying to convince them that actually intervention is needed?

Question 6:

You spoke about legitimacy and the criteria. My question is about the role of the population and if we accept the premise that sovereignty actually rests with the people, if it is clear that the people no longer support a regime do you think that in terms of legitimacy of an intervention the un-support from a population actually increases legitimacy for the international community to act even if neighbours do still support the regime?

Question 7:

If I understand correctly, you claim success for R2P in Libya but I would like to ask then, is that not only going to be determined in the coming years when we really see an improvement for those people living in Libya and for their human-rights?

Gareth Evans:

Russia and China: Russia of course has spoken with many different tongues on responsibility to protect. It views the responsibility to protect principle to justify or purport to justify its invasion of Georgia in 2008 on the ground that people with Russian passports and citizens generally of South Ossetia were being worked over by the genocidally inclined Georgians. It was hopelessly without any redeeming justification but interesting that they at least hung their hat on the principle. And we haven't had from Russia any fundamental objection to the principle of responsibility to protect and interestingly we haven't had any fundamental objection, although you might have expected it, from China and I think one of the reasons for that is that a lot of these things have got interesting histories.

It was Ching-chih Chen, the former Chinese Foreign Minister and a close colleague of mine who was sitting on the high level panel with me that existed in the run-up to 2005 and basically in that context, in the context of the debate there, he for one reason or another sort of accepted the legitimacy of this approach and for that reason among others I think made it very difficult for the Chinese subsequently to walk away from it.

But beyond that, I think the Chinese are increasingly conscious of their reputation in the world at large and much more so than perhaps many might anticipate or expect is realistic. They do take account of how they are regarded and I'm sure one of the things that was motivating China to act as it did in the Libyan Resolution is it didn't want to be on the wrong side of history [inaudible] and I think that's probably the case of Russia as well.

I mean whether that's, in the case of Russia, going to be enough to overcome their other interests in maintaining a traditional relationship with Assad or whether, if the Kosovo situation were to arise again, it would stop the Russians passing the same sort of veto as they did in 1999 or threatened veto, remains to be seen. They're both work-in-progress but I don't think – I'm not a total pessimist – about the possibility over time.

One of the classic things you constantly hear from people, including some Russians and Chinese, is they certainly don't like the idea of responsibility to protect being applied to various local situations in the North Caucasus or in Xinjiang or Tibet but in the context of the armed force that was part of the story they really don't have much to worry about because if you think about the application of that balance of consequences test, the last of the five, I mean there's no conceivable circumstances in which anyone would ever be inclined to try to put boots on the ground externally and to threaten sovereignty in that way from outside because you know that what you'd be doing by taking on a major power like that is generating a major, major conflagration.

So it's not a matter of hypocrisy and double-standards; it's a matter just of rational application of a perfectly rational and defensible criterion and one of the thoughts I have is that this might give Russia and China some comfort before they go haring off on yet another obstacle race in these situations as they arise.

I'm a congenital optimist about all sorts of things so you've got to discount for that but I'm not too stressed.

The question of population support as a legitimacy factor, well we're not talking here about human-rights violations or democracy or conflict type situations. We're talking about mass atrocity crimes, either actually occurring or being imminently about to occur or reasonably likely to occur and one suspects under those circumstances that you don't really have a terribly strong legitimacy problem in establishing the interests of the people who are least on the receiving end of this kind of treatment. Where it's a minority that's being roughed up by a majority in the country, I suppose we might think that

legitimacy would then become relevant in majoritarian terms, but in moral terms it would be a very difficult position to be in, waiting on evidence that a genocidal majority was in support of external intervention.

By and large I think it's just noises off in this context. Having evidence of support for some sort of externally driven policy action is pretty critical if you're talking about supporting dissent in Iran or something like that, but in the atrocity crime cases we're talking about here I think when you think it through it's not really a consideration that comes or should come into play for the reasons I've described.

Success for responsibility to protect in Libya [inaudible]. Again go back to the basics: what's responsibility to protect all about? Responsibility to protect is about protecting civilians from mass atrocity crime, from experiencing genocide, from experiencing ethnic cleansing, from experiencing being on the receiving end of other major crimes against humanity or war crimes and my judgment is that, measured against that very narrow criterion, it's an absolute success because we stopped, pretty obviously I think, major atrocity in Benghazi.

There's no particular evidence that civilian casualties, even if you take the view that NATO was in the overreach business when it got excited about regime change rather than just civilian protection immediately so-called, the effectiveness of the precision guided stuff and the way in which it was done, even given the difficulties of being precise about anything from 30,000 feet, collateral civilian casualties don't seem to have been phenomenally large. It seems to have been better handled in that respect than otherwise, and overall there's a hell of a lot of people in Libya that are profoundly grateful for this international intervention.

If you're talking about the longer term stability of Libya and whether the opposition forces will prove to be able to generate a stable government and all the rest of it that's a difficult call to make at this stage, but given that what responsibility to protect is all about is just the limited objective of halting or averting mass atrocity crimes against civilians at risk I think it's an no-brainer. I think Libya is a success story.

Question 8:

As the intellectual author of R2P I think it's important that you haven't claimed too much for it. It has been important in elevating awareness of crimes against humanity in the UN and developing a kind of, at least, however

duplicious, a diplomatic discourse that accepts the need to intervene in failed states and that's great and it has been but it is, as you know, it's been successful because (a) it's based on state sovereignty and (b) it presupposes unanimity among the great powers in the Security Council.

Arguably Libya would have had to be not R2P but humanitarian intervention and my question really is, isn't it where we can salute R2P as far as it goes – and it doesn't go as far as stopping Assad murdering his own people – isn't it important to keep alive and to look at the alternative concept, not perhaps an alternative but as a [inaudible] concept, of humanitarian intervention? It is a very simple concept, much more simple in a way because it's humanitarian intervention to stop crimes against humanity which are at least definable and we have got the precedent of Resolution 1970 in reference to the International Criminal Court.

Gareth Evans:

As we get older we all get a bit more nostalgic but to be nostalgic for the days when the language of the discourse was humanitarian intervention rather than responsibility to protect is to really forget how divisive that was, how far we were from any kind of reflex consensual response to those cases.

It was a wonderful rallying cry for the global north but you start talking about humanitarian intervention, the rights to intervene which is the way it's traditionally been articulated, forget all the anxieties that the humanitarian relief organizations, Red Cross and so on had about the misappropriation of the aid [inaudible], put all that to one side, but just talk about getting a reflex consensual response across the globe and it was just impossible because you had all these newly independent countries very conscious of their fragility, proud of their sovereignty, long memories of civilizing missions from the imperial powers, to concede a right to intervene, to concede the primacy. The centrality of the notion of intervention rather than just protection, was a guarantee of the kind of discourse that we had in the 1990s.

The whole point is the guts of what you like about humanitarian intervention is preserved; it's the hard end, it's the sharp end of responsibility to protect.