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**The EU's Response to the Libyan Crisis -
A Liberal Intergovernmentalist Approach**

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The EU's Response to the Libyan Crisis - A Liberal Intergovernmentalist Approach

Natalia Kroll*

Abstract

The European Union's response to the Libyan crisis in the beginning of 2011 has been characterized as a failure of the Union's Common Foreign and Security Policy. This thesis argues that the lack of a common strategy towards the Gaddafi regime was due to the different national preferences and strategic cultures of the Member States, which are the main actors in the decision-making processes concerning the CFSP. Since national preferences did not converge in the Libyan crisis, the Member States could only agree upon restrictive measures against the Libyan regime, but not upon a common military operation enforcing a no-fly zone over Libya. The measures taken under the CFSP framework were the lowest common denominator of all 27 Member States.

The Libyan case shows that the CFSP suffers from disaccord between the Member States and not necessarily from a low level of institutional integration. As long as the national preferences inside the Member States can be achieved on a national level and the strategic cultures of the nation states are as divergent as they are at the moment, there will be no deeper cooperation and integration in the field of foreign and security policy.

Keywords: Libyan Crisis, Common Foreign and Security Policy (CFSP), Intergovernmentalism, European integration

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Table of Abbreviations

CDU	Christlich Demokratische Union
CFSP	Common Foreign and Security Policy
China	People's Republic of China
Commission	European Commission
Council	Council of the European Union
CSDP	Common Security and Defence Policy
CSU	Christlich Soziale Union
EC	European Community/European Communities
ECJ	Court of Justice of the European Union
EEAS	European External Action Service
EP	European Parliament
EU	European Union
FDP	Freie Demokratische Partei
Gaddafi	Muammar Muhammad Abu Minyar al-Gaddafi
High Representative	High Representative of the Union for Foreign Affairs and Security Policy
LI	Liberal Intergovernmentalism
Libya	Libyan Arab Jamahiriya
Member States	Member States of the European Union
NATO	North Atlantic Treaty Organization
NTC	National Transitional Council
OCHA	UN Office for Coordination of Humanitarian Affairs
Russia	The Russian Soviet Federative Socialist Republic
SEA	Single European Act
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
Treaties	Treaty on the European Union and Treaty on the Functioning of the European Union
U.S./U.S.A.	United States of America
UMP	Union pour un mouvement populaire
UN	United Nations
United Kingdom (UK)	United Kingdom of Great Britain and Northern Ireland

UNSC
UNSCR

United Nations Security Council
United Nations Security Council
Resolution

1. Introduction

“The CFSP died in Libya –
we just have to pick a sand dune under which we can bury it.”¹

Not only the international press but also diplomats from the European Union describe the EU’s response to the Libyan Crisis² as a failure of the Common Foreign and Security Policy.³ Critics complain about the inconsistent approach of the Member States towards the Gaddafi regime and the deteriorating situation in the Arab country.

The high expectations after the Lisbon Treaty concerning a deeper integration in the sphere of Common Foreign and Security Policy and Common Security and Defence Policy have been disappointed. Since the introduction of a CFSP under the Maastricht Treaty in 1993, the EU has rarely reacted as one to serious political crisis, especially those involving armed conflict. The reactions to the war in former Yugoslavia in the 1990s as well as the major divide over Iraq in 2003

¹ *DPA*, “Diplomats mourn death of EU defence policy over Libya”, 24 March 2011, available at: <http://www.atlanticcouncil.org/blogs/natosource/diplomats-mourn-death-of-eu-defence-policy-over-libya> (1 May 2014).

² In this paper ‘The Libyan Crisis’ is narrowed to the period of time between February 2011 and November 2011. The long-term consequences of the uprisings and the military intervention in March and April 2011 are not subject to this paper. The paper only concentrates on the immediate response of the European Union and its Member States to the uprising in the beginning of 2011 and the violent reaction of the Gaddafi regime towards the demonstrations. Certainly, today one can still speak of a crisis in the Arab country, since the political situation has not yet been completely stabilized. However, the development of the Libyan state after November 2011 cannot be subject to this paper.

³ See some examples of the negative reaction towards EU’s response to the Crisis: *DPA*, “Diplomats mourn death of EU defence policy over Libya”, 24 March 2011, available at: <http://www.atlanticcouncil.org/blogs/natosource/diplomats-mourn-death-of-eu-defence-policy-over-libya> (1 May 2014); *Foreign Policy Association*, “EU Security Policy Disintegrates Over Libya”, 27 March 2011, available at: <http://foreignpolicyblogs.com/2011/03/27/eu-security-policy-disintegrates-over-libya/> (2 May 2014); *The Economist*, “EU foreign policy and Libya - Low ambition for the High Representative”, 23 March 2011, available at: http://www.economist.com/blogs/charlemagne/2011/05/eu_foreign_policy_and_libya (2 May 2014).

are just some examples for EU's incoherent performance on the international scene regarding foreign and security affairs.

Considering itself as a normative power, the European Union has rather focused on economic ties and development aid in its foreign policy. When it comes to the use of civilian or military means, the EU is marked by the engagement in humanitarian and rescue tasks, conflict prevention, peace-keeping and post-conflict stabilization. Even though stated in Article 43 TEU referring to the Petersberg tasks, peace-making and joint disarmament operations are rarely used under the CFSP/CSDP framework.

The uprisings in the Southern neighbourhood in 2011 constituted another challenge to the EU's foreign and security policy. The diverging approaches towards the Gaddafi regime were most notably demonstrated by France and Germany through their different voting behaviour in the United Nations Security Council. Even if the Member States of the EU agreed upon restrictive measures against the Libyan government and its supporters under the CFSP, their common reaction was perceived as a weak compromise between the two opposing camps in the EU consisting of states in favour of a common military operation and those against. The possibility of a common peace-making operation under Article 43 TEU has not been used to manage the crisis.

The Libyan case revealed the difficulty of the Member States to agree upon a common strategy in crisis management. This thesis aims to analyze the different factors which influenced the decision-making processes on the EU level during the Libyan conflict and to show why the Member States could not find a coherent approach towards the situation. The analysis will be based on the theory of Liberal Intergovernmentalism as proposed by the political scientist *Andrew Moravcsik*.

The process of European integration has been subject to many theoretical approaches. As a more recent phenomenon of European

integration, the CFSP including the CSDP constitute a rather new subject to theoretical analysis. Considering existing theories of European integration, the liberal intergovernmentalist approach explains the difficulties of the EU in foreign and security affairs in the most sophisticated way.

Even though it builds on classical Intergovernmentalism, Liberal Intergovernmentalism provides this approach with a more differentiated and profound theoretical groundwork.⁴ Other than traditional theories of regional integration such as Functionalism, Federalism or Intergovernmentalism, LI focuses more rigorously on the domestic factors which influence the building of state preferences and thus affect the state behaviour on the international level.

Moravcsik proposes a two-step process of political decision-making. He argues that governments first define a set of interests as a result of national democratic processes. After the configuration of state preferences, the governments enter into interstate negotiation in order to realize these interests. According to Liberal Intergovernmentalism, these negotiations are marked by three core principles: “Intergovernmentalism”, “Lowest-common-denominator-bargaining” and “Strict limits on future transfer of sovereignty”.⁵

According to LI, the nation states are the driving forces of European integration. *Moravcsik* argues that governments strictly limit the transfer of sovereignty to supranational bodies, because they are afraid of losing their autonomy. They are only willing to cooperate with other states when they can expect benefits from the cooperation. The liberal aspect of the theory claims that the governments are shaped by different domestic interests and preferences which they aim to achieve through cooperation. Since every government tries to hold on to the

⁴ See: *Schimmelfennig*, Liberal Intergovernmentalism, in: *Wiener/Diez* (eds.), *European Integration Theory*, Oxford 2004, p. 75.

⁵ *Grimmel/Jakobeit*, *Politische Theorien der Europäischen Integration*, Wiesbaden 2009, p. 193.

national preferences in interstate negotiations, these are usually marked by the lowest-common-denominator-bargaining.

LI can be seen as a 'grand theory' since it gives a broad theoretical framework which can be used for empirical tests and does not only focus on a single political activity.⁶ According to *Moravcsik's* approach, there are multiple factors varying according to different situations which influence state preferences. This broad explanation leaves the possibility to relate the theory to any regional organization and to every decision-making process in this organization.

When applying different regional theories to the process of European integration it becomes clear that many theories only allow explaining some policies of the EU, especially the economic development. Most of the theories, especially Functionalism, fail to explain the low level of integration in the field of foreign and security policy. LI, however, provides reasonable explanations for this fact. Of all European integration theories, LI explains the incoherent reaction of the EU Member States to the Libyan crisis in the most convincing manner. This is the reason why this theory will serve as the basis for the following case study which aims to analyze the intergovernmental decision-making processes taken under the institutional framework of the CFSP and CSDP and the reasons why the Member States had difficulties to find a common strategy towards the Gaddafi regime.

In the first part of this thesis, the theoretical background of the case study will be illustrated. After introducing the general theoretical approaches towards European integration, the focus will lie on the intergovernmentalist perspective. In order to understand the development of the theory of Liberal Intergovernmentalism, one has to go back to classical Intergovernmentalism proposed by *Stanley Hoffmann* in the 1960s. After presenting the basic assumptions of *Hoffmann's* approach, *Moravcsik's* theory of LI will be brought into focus. In this

⁶ See: *Moravcsik/Schimmelfennig*, Liberal Intergovernmentalism, in: *Wiener/Diez* (eds.), *European Integrations Theory*, New York 2009, pp. 67-87, p. 67.

part, the sophisticated theoretical framework of LI will be depicted in detail.

In the second part of this thesis, the historical background of the case study will be demonstrated. After summarizing the events during the uprisings in Libya, the reaction of the international community towards the Gaddafi regime will be addressed. The focus will lie on the adoption of UNSC Resolutions 1970 (2011) and 1973 (2011) which explicitly address measures against the Gaddafi government and the disastrous humanitarian situation in Libya. As a result of UNSCR 1973, the military intervention enforcing a no-fly zone over the Libyan territory will be shortly pointed out.

In the second part, the response of the EU and its Member States to the Libyan crisis will be identified. First, the common measures against the Gaddafi regime under the CFSP framework will be examined. For this purpose, all official documents of the EU concerning the situation in Libya have been studied. The Decisions of the Council of the European Union reveal which measures have been commonly adopted by the Member States on the intergovernmental level. The reaction of France and Germany will be given as an example, in order to demonstrate the incoherent approaches of the Member States towards the Gaddafi regime.

In the third part of this thesis, the response of the EU and its Member States towards the Libyan crisis will be analyzed from the liberal intergovernmentalist perspective. The two stage process of political decision-making as proposed by *Andrew Moravcsik* will serve as groundwork of the analysis. Firstly, the building of state preferences of France and Germany during the Libyan crisis will be examined. Secondly, the interstate negotiation of these preferences on the international and European level will be evaluated taking into account the three core principles of interstate negotiations.

2. Theoretical background

2.1 Theories of European integration

The process of European integration has been subject to many theoretical approaches. The theories of Federalism, (Neo-) Functionalism, (Liberal) Intergovernmentalism and Multi-Level governance are considered to be the main approaches towards European integration.⁷ The basic assumption of most of European integration theories is that the European Union constitutes a ‘*sui generis*’ project, which is further integrated than an international organisation but less integrated than a federal state. Usually, the EU is therefore characterized as a ‘supranational organisation’.

Regarding the European Union, it is difficult to talk about *one* level of integration. Some policy fields of the EU are deeply integrated, whereas others, such as the CFSP, are still shaped by the Member States on an intergovernmental level. The deeply integrated policy fields, such as competition and trade policy, are mostly conducted by the EU’s supranational institutions, particularly the European Commission. The Member States have given up a lot of their national sovereignty in these areas, especially in the commercial policy. One might argue that this is the case because the Member States are aware of the big economic advantages of a deeply integrated common market.

From the beginning of European integration, the idea of a unified economic area has been seen as the core element of further political integration. Neofunctionalists such as *Ernst B. Haas* claim that the integration of ‘low politics’ such as economic sectors would finally lead to a functional spill-over in the political field.⁸

⁷ For further information on these theories see: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration.

⁸ *Ernst B. Haas*, *The Uniting of Europe: Political, Social and Economic Force*, Stanford 1958.

Intergovernmentalists, however, argue that the integration in the field of ‘low politics’ does not necessarily spill over into the realm of ‘high politics’, such as security and defence policy, which are considered to be the core elements of the sovereignty of a state.

In order to explain the weak response of the EU to the Libyan crisis, the CFSP framework and the decision-making procedures during the crisis need to be analyzed. The theory of Liberal Intergovernmentalism seems to be the most promising to illustrate the problems of a deeper integration in the field of foreign and security policy.

In the following, this theoretical approach and its development within the process of European integration will be illustrated. In order to understand the theory of Liberal Intergovernmentalism one has to take into consideration the approach of ‘classical’ Intergovernmentalism proposed by *Stanley Hoffmann*.

2.2 Intergovernmentalism

2.2.1 *Historical context*

The main proponent of classical Intergovernmentalism is *Stanley Hoffmann*, who was born in 1928 in Vienna and who founded the Centre for European Studies (CES) at the Harvard University in 1968.⁹ His article “Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe”¹⁰ published in 1966 is considered to be the most influential text in the theory of Intergovernmentalism.¹¹ *Hoffmann* developed this approach in a phase of stagnation in the European integration process, during the ‘empty-chair crisis’ in 1965/66. The French President Charles de Gaulle had

⁹ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 134.

¹⁰ *Hoffmann*, Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe, in: *Daedalus* 95/3, 1966, pp. 862-915.

¹¹ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 134.

rejected the proposal of giving up more national sovereignty by conferring more competences to the supranational bodies, namely the European Commission. De Gaulle was in fact favouring a strong political cooperation, but on an intergovernmental and not on a supranational level.¹²

In order to explain the developments on the European scene during that time, *Hoffmann* developed a pattern to analyse the situation. His approach is not an International Relations theory in the narrow sense. Stanley does not provide an abstract theory which gives answers to 'if-then' questions but rather tries to explain a specific situation in the European process. This is the reason why Intergovernmentalism cannot be assigned to one specific classical theory, even though scholars tend to relate it to the school of Realism.

2.2.2 *Intergovernmentalist approach*

Intergovernmentalism can be understood as the main adversary of all European integration theories which predict the disappearance of the nation states in the European Union such as the federalist or the functionalist approach.¹³

The core entity which is analyzed by intergovernmentalists is the nation state. Other than in the realist theories, intergovernmentalists consider a nation state to be much more than just 'like-units' in an anarchic world, whose behaviour is always characterized by the same maxims such as the struggle for power. The realist and the intergovernmentalist approaches share in fact the basic assumption that the international system is marked by anarchy.¹⁴ However, Intergovernmentalism claims that the nation state can be shaped by different internal and external factors which influence the behaviour

¹² See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 134f.

¹³ See: *ibid.*

¹⁴ See: *ibid.*, p. 137.

of governments on the international scene.¹⁵ Hoffman describes the international system as follows: “Every international system owes its inner logic and its unfolding to the diversity of domestic determinants, geohistorical situations, and outside aims among units”.¹⁶

Even though states would all follow similar principles in the international system, they would still be influenced by different domestic factors, such as traditions, norms, history, interest groups, social structures etc. as well as external factors, which are the interference of developments which affect the whole international system, such as technological progress, military development as well as the increasing interdependence between states.¹⁷

Applying this approach to the European Communities, *Hoffmann* predicts that finding a consensus among the Member States would be a difficult undertaking:

“The “new Europe” dreamed by the Europeans, could not be established by force. Left to the wills and calculations of its members, the new formula has not jelled because they could not agree in its role in the world”.¹⁸

According to *Hoffmann*'s statement, the EC (EU) Member States cannot agree on a common position in world politics due to their different national interests. He defines ‘national interest’ by the following formula:

*National interest = national situation + position of the government*¹⁹

The term ‘national situation’ includes different factors, namely internal and external factors, which can be objective or subjective. Internal objective factors are the political system of a state or the

¹⁵ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 137.

¹⁶ *Hoffmann*, *Obstinate or Obsolete?*, p. 864.

¹⁷ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 134.

¹⁸ *Hoffmann*, *Obstinate or Obsolete?*, p. 867.

¹⁹ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 138.

social structure. Internal subjective factors can be values, opinions, prejudices, reflexes or traditions.²⁰

External factors relate to a country's position in the world. Objective external factors are the geographical position or the formal commitment of a state, such as agreements under international law. Subjective external factors can be the assessments of other countries and the other's attitudes and approaches toward oneself.²¹

Hoffmann describes these internal and external factors as the basis for the action of governments. According to him, a government cannot act without taking these factors into consideration; its freedom of choice is limited because of the national situation.²² The national situation is thus strongly influencing political leaders in their decision-making processes and can be seen as a key factor with regard to foreign affairs.²³

Given that all states are influenced and guided by different internal and external factors, it is difficult to find an agreement between states on the European level:

“Domestic differences and different world views obviously mean diverging foreign policies; the involvement of the policy-makers in issues among which “community-building” is merely one has meant a deepening, not a decrease, of those divergences.”²⁴

According to *Hoffmann*, it is the Member States with their national interests which will decide upon the level of integration. Integration can only arise if states, represented by their governments, have the autonomous will to cooperate. States are only willing to cooperate if their national interest converges with the national interests of the other states. In this regard, it is essential that states have a similar perception of the present situation as well as a shared vision of a common future.

²⁰ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 139.

²¹ See: *ibid.*

²² See: *Hoffmann*, *Obstinate or Obsolete?*, p. 868.

²³ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 139.

²⁴ *Hoffmann*, *Obstinate or Obsolete?*, p. 863.

However, according to intergovernmentalists, the integration process has its limits. Other than neofunctionalists, intergovernmentalists believe that economical integration ('low politics') will not spill over to political integration ('high politics'). The logic of a spill-over would only work for the area of low politics and only as long as there is a "permanent excess of gains over losses, and of hopes over frustrations"²⁵. In the area of 'high politics' such as foreign and security policy, the "Logic of diversity" would prevail, which centres the preservation of national autonomy and sovereignty: "in areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance, to the uncontrolled uncertainty of the untested blender."²⁶

Thus, in the intergovernmentalist approach, the nation state is the central actor in the European Union. Even though progresses have been made in the economic integration, the state remains

"the main focus of expectations, and as the initiator, pace-setter, supervisor, and often destroyer of the larger entity: for in the international arena the state is still the highest possessor of power, and while not every state is a political community there is as yet no political community more inclusive than the state."²⁷

2.3 Liberal Intergovernmentalism

After the 'empty chair crisis' in 1965/1966 the process of European integration has been decelerating. The optimistic functionalist assumption that the successful integration in the economic area would spill over to a deeper political integration has been disproved by Charles de Gaulle and his nation state oriented politics. *Brunn* observed that the 'Luxembourg compromise' in 1966 changed the

²⁵ *Hoffmann*, *Obstinate or Obsolete?*, p. 882.

²⁶ *Ibid.*

²⁷ *Ibid.*, p. 909.

process of European integration drastically.²⁸ In his opinion, the European cooperation has been rerouted from a supranational to a more intergovernmental level. The Member States of the EC have limited the scope of action of the European Commission showing that they are the key decision-makers in the European process.²⁹

Consequentially, the 1970s were marked by more and more intergovernmental cooperation. In 1974 the Member States of the EC established the European Council in order to create a forum for discussions and consultancy between the governments. Even though the European Council has not yet been an official institution of the European Communities, it still had a lot of influence on their politics. The Heads of State or Government started to give guidelines for the Communities' politics and influenced the decision-making processes in the Council of Ministers. At the same time, the influence of the European Commission, which had so far given the direction for the integration process, has been downgraded. From now on, the European Council has also spoken on behalf of the European Communities in international affairs.³⁰

The predominant euroscepticism of the 1970s changed into a pro-European movement in the 1980s. With the creation of the Single European Act (SEA) in 1985, which was brought forward by the "White Paper" of the European Commission, the Member States of the European Communities decided to transform their common policies into a European Union.³¹

Many changes have been made under the SEA with regard to legislative provisions as well as to the institutional framework, including the European foreign policy. Most of the decisions taken by the Council of Ministers concerning the common market could now be taken by qualified majority. Furthermore, the power of the European

²⁸ See: *Brunn*, Die europäische Einigung, Stuttgart 2002, p. 173.

²⁹ See: *ibid.*

³⁰ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 161.

³¹ See: *Ibid.*

Parliament was increased in the law-making procedure. Most of the decisions made under the Single European Act strengthened the supranational institutions of the European Communities and weakened the position of the Member States.³²

The classical Intergovernmentalism was created in a time where the Member States of the EC demonstrated their power in the process of European integration. How could the change towards a deeper European integration in the 1980s be explained by Intergovernmentalism?

Andrew Moravcsik from Princeton University tried to find an answer to this question. In his essay “Negotiating the Single European Act: national interests and conventional statecraft in the European Community”³³ from 1991 the political scientist introduced his concept of Liberal Intergovernmentalism.

2.3.1 *Configuration of state preferences*

Andrew Moravcsik agrees with intergovernmentalists that the Member States and its governments are the key actors shaping the process of European integration. However, he complements *Stanley Hoffmann’s* approach of Intergovernmentalism with a strong liberal element.

According to *Moravcsik*, the behaviour of states in the international system is strongly influenced by domestic politics: “An understanding of domestic politics is a precondition for, not a supplement to, the analysis of strategic interaction among states.”³⁴ The liberal intergovernmentalist claims that the democratic processes within a nation state

³² See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 161.

³³ *Moravcsik*, Negotiating the Single European Act: national interests and conventional statecraft in the European Community, in: *International Organization*, 45/1, 1991, pp. 19-56.

³⁴ *Moravcsik*, Preferences and Power in the European Community - A Liberal Intergovernmentalist Approach, in: *Journal of Common Market Studies*, 31/4, 1993, pp. 473-524, p. 473.

and the different societal actors are shaping state preferences in international negotiations.

In the liberal thinking, other than in realist theories, the definition of the interests of a state does not arise from the given forces of the international system or a fix set of preferences. Liberal intergovernmentalists argue that states are rather influenced by the internal pluralistic competition of interests and opinions.³⁵ They thus disagree with the realist assumption that states are the main actors in international relations. According to *Moravcsik*, states are only the representative institutions of domestic coalitions of social actors.³⁶ These representative institutions translate the preferences of individuals and groups into state preferences. *Moravcsik* argues that individuals turn to the state with their preferences to achieve goals which they cannot achieve via private actors.³⁷ Consequently, the government of a state is constantly pressured by the power of individuals and groups which want it to pursue policies along the lines of their preferences.³⁸

Moravcsik formulates a concept in which there are two stages of a political decision-making process: “governments first define a set of interests, then bargain among themselves in an effort to realize those interests.”³⁹ As aforementioned, the liberal intergovernmentalist argues that the democratic process inside of a state, including the rivalry between political parties and societal groups, has a very big impact on the decision-making practice of the government:

“National interests [...] emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form, and new policy alternatives are recognized by governments.”⁴⁰

³⁵ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 192.

³⁶ See: *Moravcsik*, Taking Preferences Seriously - A Liberal Theory of International Politics, in: *International Organization*, 51/4, 1997, pp. 513-555, p. 518.

³⁷ See: *ibid.*

³⁸ See: *ibid.*

³⁹ See: *Moravcsik*, Preferences and Power in the European Community, p. 481.

⁴⁰ *Ibid.*

In view of this fact, LI leaves the possibility for flexible and changeable objectives in the foreign policy of a state. *Moravcsik* calls this liberal part of his theory the “demand-side”.⁴¹ In the first step of its decision-making process, the government of a state is underlying variable societal factors, e. g. the pressure from domestic societal actors as represented in political institutions. Trying to include these different national preferences, the government then configures state preferences.⁴²

After the first step, the government aims to realize these preferences through cooperation and coordination with other states. *Moravcsik* calls this second step the “supply side”.⁴³ The government tries to supply the outcomes which were demanded on the domestic level. According to *Moravcsik*, these intergovernmental negotiations are shaped by strategic-rational bargaining, where the own power position compared to the others plays an important role. The liberal intergovernmentalist acts on the assumption that there three core principles on the “supply-side”.⁴⁴

2.3.2 *Interstate negotiations*

Moravcsik formulates three principles which shape interstate negotiations and cooperation. In this intergovernmentalist part of his theory the scientist explains that states are underlying political factors which influence the outcome of decision-making processes. According to *Moravcsik*, interstate negotiations on the European level are shaped by the principles of “Intergovernmentalism”, “Lowest-common-denominator bargaining” and “Strict limits on future transfers of sovereignty”.⁴⁵ In the following, these core principles as proposed by *Moravcsik* will be explained.

⁴¹ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 193.

⁴² See: *ibid.*

⁴³ See: *ibid.*

⁴⁴ See: *ibid.*

⁴⁵ See: *ibid.*

1) Intergovernmentalism

According to *Moravcsik*, the sovereign nation states represented by their governments are the key actors in the decision-making process in the EC. He argues that the most important agenda-setting decisions in the history of the EC, in which common policies have been established or reformed, were negotiated on the intergovernmental level.⁴⁶

Moravcsik argues that this was also the case when the SEA was negotiated in the 1980s, despite the already achieved level of integration. He states: “EC politics is the continuation of domestic policies by other means. Even when societal interests are transnational, the principal form of their political expression remains national”⁴⁷. From this he concludes that the states in the European Communities only used the transnational panel in order to pursue their own national preferences.

Moravcsik strengthens his argument with the fact that it is the European Council and the Council of Ministers, thus representatives of the nation states, which are setting the **general political direction and priorities** of the EC, not the supranational institutions such as the Commission or the European Parliament.⁴⁸

2) Lowest-common-denominator bargaining

In the intergovernmentalist view, negotiations on the European level are characterized by the lowest-common-denominator bargaining. According to *Moravcsik*, the configuration of national preferences defines a ‘bargaining space’ of potentially realizable agreements between the governments of the Member States.⁴⁹ Finding an agreement proves to be difficult, since every government tries to

⁴⁶ See: *Moravcsik*, *Preferences and Power in the European Community*, p. 496.

⁴⁷ *Moravcsik*, *Negotiating the Single European Act*, p. 25.

⁴⁸ See: *Grimmel/Jakobeit*, *Politische Theorien der Europäischen Integration*, p. 193.

⁴⁹ See: *Moravcsik*, *Preferences and Power in the European Community*, p. 496f.

realize the own national preferences. In order to define a common policy, the Member States of the EC (EU) have to find a solution which is favourable for each of them. *Moravcsik* defines ‘negotiation’ as “the process of collective choice through which conflicting interests are reconciled”⁵⁰.

One problem that arises with that type of interstate negotiations is the question of efficiency. There are a lot of excessive costs to negotiating bargains which may hinder cooperation, such as communication costs or coercive threats.⁵¹ The distributional implications of the bargaining are another problem of interstate negotiations. Once the states have decided upon a specific outcome, the expected costs and advantages will be distributed among the national governments.⁵² It is plausible that all states want to leave negotiations with an advantage.

Moravcsik has identified three factors which may influence the distributional outcomes of bargaining on the European level. Firstly, intergovernmental cooperation in the EC (EU) is voluntary. The most important decisions are taken in a non-coercive unanimity voting procedure. Secondly, the governments are usually well informed about the preferences of the other negotiators, so that the communication costs are relatively low. Thirdly, the transaction costs are low, because negotiations on the European level can be held over a long period of time during which the governments can make offers and counter-offers at relatively little cost. Furthermore, the negotiators can agree upon side-payments and make linkages with different policy fields.⁵³ It is an important factor that negotiations in the EC usually follow the Pareto-optimality approach and can be thus viewed as a cooperative game.⁵⁴

On the one hand, the governments of the Member States are driven by their state preferences. On the other hand, they are bargaining among

⁵⁰ *Moravcsik*, *Preferences and Power in the European Community*, p. 497.

⁵¹ See: *ibid.*

⁵² See: *ibid.*

⁵³ See: *ibid.*, p. 498.

⁵⁴ See: *ibid.*, p. 499.

each other within the given institutional framework and the philosophy of a cooperative game.

Even though the environment for bargaining is very beneficial in the EC, *Moravcsik* holds to the fact that relative power matters.⁵⁵ If a government has an alternative to the cooperation within the EC (EU), it is more disposed to adhere to its position in the negotiations.

“The greater the potential gains for a government from cooperation, as compared to its best alternative policy, the less risk of non-agreement it is willing to assume and, therefore, the weaker its bargaining power over the specific terms of agreement.”⁵⁶

According to theories of bargaining and negotiation, there are three determinants of interstate bargaining power:

1. unilateral policy alternatives (‘threats of non-agreement’)
2. alternative coalitions (‘threats of exclusion’);
3. the potential for compromise and linkage.⁵⁷

According to *Moravcsik*’s analysis of the negotiation process of the Single European Act, the votes of the ‘big three’, Germany, France and the United Kingdom, are the most important ones within the EC. Smaller countries, which do not play a strong economic or political role, could be conciliated by side-payments. However, such ‘side-payments’ are not possible with the big states which have a strong position in the negotiations. Therefore the decisions on the European level would be based on the lowest common denominator of the positions of the Member States. *Moravcsik* understands the trend towards a deeper European integration in the 1980s and the beginning of 1990s as a trilateral project between Germany, France and the UK, which could only be fulfilled because of the convergence of the interests of

⁵⁵ See: *Moravcsik*, *Preferences and Power in the European Community*, p. 499.

⁵⁶ *Ibid.*

⁵⁷ See: *Ibid.*

the ‘big three’ in the key questions of European integration, especially in questions of the liberalization of the market.⁵⁸

There is one case, according to *Moravcsik*, in which it is possible that one of the ‘big three’ agrees upon a policy which is against its own interests: if the state fears to be excluded by the two other states and hence worries about having a future disadvantage. Thus, the pure possibility of other state having a comparative advantage can be an incentive to cooperate:

“If two major states can isolate the third and credibly threaten it with the exclusion and if such exclusion undermines the substantive interests of the excluded state, the coercive threat may bring about an agreement at a level of integration above the lowest common denominator.”⁵⁹

3) Strict limits on future transfers of sovereignty

The third principle of interstate negotiations on the European level according to *Moravcsik* is the *strict limitation on future transfers of sovereignty*. Even though state preferences may vary, the protection of state sovereignty is seen as a constant by Liberal Intergovernmentalism. Consequentially, governments try not to reduce their sovereignty by giving up competences to a supranational level, especially to the European Commission, but also to the European Parliament or to the Court of Justice of the European Union.⁶⁰

Moravcsik explains his third standpoint as follows: “Policymakers safeguard their countries against the future erosion of sovereignty by demanding the unanimous consent of regime members to sovereignty-related reforms”⁶¹. In this explanation, the author also refers to the fact that the nation states do not want to introduce a qualified majority

⁵⁸ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 194.

⁵⁹ *Moravcsik*, Negotiating the Single European Act, p. 26.

⁶⁰ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 194.

⁶¹ *Moravcsik*, Negotiating the Single European Act, p. 26f.

voting on important issues in the intergovernmental bodies of the EC, namely the European Council and the Council of Ministers.

Answering to critique from neofunctionalists, who argue that the supranational institutions of the EC gain more and more competences through a spill-over effect, *Moravcsik* explains that the national governments only accept the institutional structure of the EC as long as it permits them to strengthen their control over domestic affairs and helps them to fulfil the interests of domestic individuals and groups which would be otherwise unachievable.⁶²

The liberal intergovernmentalist mentions two factors of the EC institutions which help strengthening the power of the governments. First of all, the EC institutions provide a common negotiation forum which increases the efficiency of interstate bargaining. The institutional framework with common decision-making procedures reduces communication and transactions costs and enables of a wider range of cooperative agreements.⁶³

Secondly, the EC institutions strengthen the autonomy of national governments vis-à-vis the societal interest groups inside the state.⁶⁴ National political leaders are encouraged to take decisions autonomously on an acceptable level of political risk, which can be a prerequisite for successful common policies.⁶⁵ The domestic preferences could then be achieved via this EC policy.

The giving-up of some sovereignty to EC (EU) institutions thus can be very beneficial to the nation states. The Member States are willing to sacrifice some national autonomy in exchange for certain advantages.⁶⁶ This is how the further integration of the European Communities can be explained according to *Andrew Moravcsik*.

⁶² See: *Moravcsik*, Preferences and Power in the European Community, p. 507.

⁶³ See: *Ibid.*

⁶⁴ See: *Ibid.*

⁶⁵ See: *Ibid.*

⁶⁶ See: *Ibid.*

3. Case Study - The EU's Response to the Libyan Crisis

3.1 Historical Background⁶⁷

The uprisings in neighbouring Tunisia and Egypt heated up the long-simmering Libyan reform debates in February 2011. The years before, many Libyans were asking for reforms which would give more influence to opposition forces and guarantee basic political rights to the citizens. Muammar al Gaddafi⁶⁸, who himself had led a rebellion against the Libyan monarchy in the name of nationalism, self determination and popular sovereignty in 1969, has governed the country for more than forty years under ultimate authority excluding the population from most basic political participation.⁶⁹

On 17 February 2011, Libyan opposition groups called for a 'day of rage' in order to commemorate Libyan protests that had taken place five years earlier in the city of Benghazi. During these demonstrations several protesters were killed by security forces while attacking the city's Italian consulate.⁷⁰

The first protests in 2011 had started in Benghazi and other eastern cities on February 15 and 16. These protests can be understood as a reaction to the autocratic governance of the Gaddafi regime and its

⁶⁷ This list of historical developments during the Libyan crisis does not claim to be exhaustive. Many events happened in a short period of time and they cannot be all listed in this paragraph. The following summary of the events should give an overview about the situation in order to understand the subsequent analysis of the EU's response to the crisis.

⁶⁸ The name of Muammar al Gaddafi is transliterated in many ways by various sources. This paper refers to him as 'Gaddafi' except when quoting other documents, wherein his name is represented as it appears in the source.

⁶⁹ See: *Blanchard*, Libya: Unrest and U.S. Policy, CRS Report for Congress, Congressional Research Service, 29 March 2011, p. 1, .available at: <http://fpc.state.gov/documents/organization/159788.pdf> (15 May 2014).

⁷⁰ See: *Al Jazeera*, "Day of rage kicks off in Libya", 17 March 2011, available at: <http://www.aljazeera.com/news/africa/2011/02/201121755057219793.html> (5 May 2014).

ignorance to calls for reforms from the population.⁷¹ The Gaddafi authorities quickly lost control over the demonstrations and used force against the civil protestors. The situation escalated and resulted in Libyan security forces opening fire with heavy weaponry.⁷² Several protestors were said to be killed.⁷³ The opposition groups finally gained control over key eastern cities.

The events in the eastern part of the country spread into the western regions on February 18 and 19. Some military officers changed sides and supported the opposition forces after the uncontrolled events in the eastern parts of the country. Still, the Gaddafi regime succeeded in controlling the western regions including the capital, Tripoli, with the help of regime supporters and family-led security forces.⁷⁴

As a reaction to the use of force against opponents many Libyan diplomats abandoned Gaddafi. The first to officially resign from his position was the head of the Libya's Arab League delegation, Abdel-Moneim al-Houni, on February 20.⁷⁵ Eleven other members of the mission followed him and joined the opposition on February 25.⁷⁶ On February 21, Gaddafi's son, Saif al-Islam Gaddafi, appeared on the Libyan television addressing the Libyan people and stating that his father would fight until the "last bullet"⁷⁷.

Other Libyan high officials and diplomats followed the Arab League delegation and also resigned from their positions, such as Chief of State of Protocol Nuri al Mismari, Ambassador to the U.S. Ali Adjali

⁷¹ See: *Blanchard*, *Libya: Unrest and U.S. Policy*, p. 1.

⁷² See: *ibid.*

⁷³ See: *Black*, "Libya cracks down on protesters after violent clashes in Benghazi", in: *The Guardian*, 17 February 2011, available at: <http://www.theguardian.com/world/2011/feb/16/libya-clashes-benghazi> (2 May 2014).

⁷⁴ See: *Blanchard*, *Libya: Unrest and U.S. Policy*, p. 1.

⁷⁵ See: *CNN*, "Libya Civil War Fast Facts", 16 April 2011, available at: <http://edition.cnn.com/2013/09/20/world/libya-civil-war-fast-facts/> (2 May 2014).

⁷⁶ See: *Washington Post*, "Libya's entire Arab League mission resigns", 25 February 2011, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/25/AR2011022504155.html> (2 May 2014).

⁷⁷ See: *Al Arabiya*, "Gaddafi's son warns of "rivers of blood" in Libya", 21 February 2011, available at: <http://www.alarabiya.net/articles/2011/02/21/138515.html> (2 May 2014).

and Libyan diplomats at the UN.⁷⁸ After being ordered to bomb civilians, two Libyan fighter pilots defected and requested asylum in Malta.⁷⁹

3.2 International reaction

The ongoing uprising in Libya against the government of Muammar al Gaddafi and the violent response of the regime in February 2011 seized the attention of the international community. It was subject to many domestic and international debates about potential international military intervention, including the establishment of a no-fly zone over Libya.

3.2.1 UNSC Resolution 1970 (2011)

[UN Secretary General Ban Ki-Moon](#) addressed Gaddafi demanding him to end the conflict immediately. On February 25, U.S. President Barack Obama ordered to freeze Gaddafi's assets. One day later, the UN Security Council unanimously⁸⁰ adopted Resolution 1970 (2011) imposing sanctions against the Libyan government, including arms embargo, travel ban and asset freeze.⁸¹ Furthermore, the UN Security Council referred the Libyan case to the Prosecutor of the International Criminal Court for investigation of crimes against humanity.⁸² Meanwhile, the situation in Libya was deteriorating. Gaddafi refused to step down and presented himself as Libya's legitimate leader. In an

⁷⁸ See: *CNN*, "Libya Civil War Fast Facts", 16 April 2011, available at: <http://edition.cnn.com/2013/09/20/world/libya-civil-war-fast-facts/> (2 May 2014).

⁷⁹ See: *Ibid.*

⁸⁰ See: *Stockholm International Peace Research Institute*, available at: http://www.sipri.org/databases/embargoes/un_arms_embargoes/libya/libya_2011/un-security-council-voting-record-libya (2 May 2014).

⁸¹ UNSCR S/RES/1970 (2011), 26 February 2011.

⁸² *Ibid.*

interview he stated that the population loved him and would die to protect him.⁸³

More and more of his loyalty turned against him and supported the opposition forces.⁸⁴ On March 7, the NATO launched a 24-hour air surveillance of the Libyan air space. In order to provide round-the-clock observation, the alliance deployed Airborne Warning and Control Systems aircraft to the area.⁸⁵

Two days later NATO defence ministers met in Brussels in order to discuss proposals for a no-fly zone over the Libyan territory.⁸⁶ Meanwhile, U.S. Secretary of State Hillary Clinton announced that the U.S. was suspending its relationship with the Libyan embassy.⁸⁷

From March 10 until March 17, the situation in Libya worsened dramatically, with continuing air-operations by pro-Gaddafi forces against the Libyan population and the beginning of an assault on the main opposition base in Benghazi.⁸⁸ On March 16, Libyan forces attacked the town of Misrata, which was held by rebels, with tanks and artillery.⁸⁹

⁸³ See: *Amanpour*, Interview with Muammar al Gaddafi, 28 February 2011, available at: <http://abcnews.go.com/WNT/video/christiane-amanpours-exclusive-gadhafi-interview-libya-strongman-politics-13024275> (3 May 2014).

⁸⁴ *CNN*, “Libya Civil War Fast Facts”, 16 April 2011, available at: <http://edition.cnn.com/2013/09/20/world/libya-civil-war-fast-facts/> (3 May 2014).

⁸⁵ *NATO*, NATO and Libya, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (5 May 2014).

⁸⁶ *NATO*, NATO Defence Ministers will discuss situation in Libya and longer term prospects in Middle East, 7 March 2011, available at: http://www.nato.int/cps/en/natolive/news_71277.htm? (5 May 2014).

⁸⁷ *Dougherty*, “Clinton: U.S. suspending relationships with Libyan Embassy”, *CNN*, 10 March 2011, available at: <http://edition.cnn.com/2011/POLITICS/03/10/libya.embassy/> (5 May 2014).

⁸⁸ See: *Blanchard*, *Libya: Unrest and U.S. Policy* p. 3.

⁸⁹ See: *The Guardian*, “Libya and Middle East unrest”, 16 March 2011, available at: <http://www.theguardian.com/world/blog/2011/mar/16/arab-and-middle-east-protests-libya> (5 May 2014).

3.2.2 UNSC Resolution 1973 (2011)

As a reaction to the deteriorating situation, the UN Security Council met on March 17. It adopted Resolution 1973 (2011) which demanded an immediate ceasefire and an end to attacks on civilians by Gaddafi's armed forces.⁹⁰ It tightened the existing sanctions on the Gaddafi regime and his supporters and created a legal framework⁹¹ for the creation of a "non-fly zone" over Libya.⁹²

Furthermore, the Resolution

“Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, **to take all necessary measures**, notwithstanding paragraph 9 of resolution 1970 (2011), **to protect civilians and civilian populated areas under threat of attack** in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council.”⁹³⁹⁴

Ten out of fifteen members of the Security Council voted in favour of UNSC Resolution 1973 (2011): United States of America, Great Britain, France, Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal and South Africa. No member state voted against the Resolution. However, there were five abstentions: Brazil, China, India, Russia, and Germany.⁹⁵

⁹⁰ UNSCR S/RES/1970 (2011), 26 February 2011.

⁹¹ See: *Rousseau*, “Why Germany Abstained on UN Resolution 1973 on Libya”, *Foreign Policy Journal*, 22 June 2011, available at: <http://www.foreignpolicyjournal.com/2011/06/22/why-germany-abstained-on-un-resolution-1973-on-libya/> (5 May 2014).

⁹² UNSCR S/RES/1970 (2011), 26 February 2011.

⁹³ UNSCR S/RES/1973 (2011), 17 March 2011.

⁹⁴ This paragraph is important to understand the NATO intervention in Libya, which will be discussed later on. The accentuation has been made by the author.

⁹⁵ The different voting behaviour of European Union Member States in the UN Security Council will be analyzed under 3.3 and 4.1.

One day after the adoption of the UNSC Resolution, the Libyan Foreign Minister Moussa Koussa announced a cease-fire. Nevertheless, according to witnesses' reports, the government attacks continued in Mistrata and Ajdabiya.⁹⁶ On March 19, government troops entered Benghazi with tanks, using artillery fire against the opposition forces.⁹⁷

The same day, convinced that Gaddafi was not adhering to the mandated cease-fire in UNSC Resolution 1973, France started the first offensive against the Gaddafi regime by striking armoured units near Benghazi.⁹⁸ American, British and Canadian military forces joined France and struck Libyan military bases with missiles and fighter jets in order to enforce the no-fly zone.⁹⁹ The multinational coalition was operating under *Operation Odyssey Dawn* led by the United States and was not yet under the command and control of NATO.¹⁰⁰

According to Vice Admiral Bill Gortney, Director of the Joint Staff of the U.S. Government, the United States took initial operational command of coalition operations with the objective of subsequently shifting leadership to a coalition command.¹⁰¹

⁹⁶ See: *Al Jazeera*, "Libya declares ceasefire but fighting goes on", 18 March 2011, available at: <http://www.aljazeera.com/news/africa/2011/03/2011318124421218583.html> (3 May 2014).

⁹⁷ See: *BBC*, "Libya: Gaddafi forces attacking rebel-held Benghazi", 19 March 2011, available at: <http://www.bbc.co.uk/news/world-africa-12793919> (3 May 2014).

⁹⁸ See: *Gertler*, *Operation Odyssey Dawn (Libya): Background and Issues for Congress*, 30 March 2011, available at: <http://www.fas.org/sgp/crs/natsec/R41725.pdf> (4 May 2014).

⁹⁹ See: *CNN*, "Gunfire, explosions heard in Tripoli", 20 March 2011, available at: <http://edition.cnn.com/2011/WORLD/africa/03/19/libya.civil.war/index.html> (3 May 2014).

¹⁰⁰ See: *NATO*, *NATO and Libya*, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹⁰¹ See: *U.S. Department of Defense*, *DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn*, 19 March 2011, available at: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4786> (4 May 2014).

3.2.3 NATO intervention

On March 22, the NATO members agreed to enforce an arms embargo against Libya, which was demanded by the UNSC Resolution 1970. One day later, NATO ships, already present in the Mediterranean Sea, began cutting off the sea supply of weapons to Libya by stopping and searching any suspect vessel.¹⁰²

On March 24, the North Atlantic Council agreed to enforce a no-fly zone over Libya in response to UNSC Resolution 1973.¹⁰³ Three days later, after one week of coalition air operations under U.S. command, NATO announced that it would take over command and control of all existing military operations. In his statement on the NATO operation in Libya, NATO Secretary General Anders Fogh Rasmussen declared that the goal of the intervention was to “protect civilians and civilian-populated areas under threat of attack from the Gaddafi regime”¹⁰⁴. He stressed the fact that NATO was only implementing UN Resolution 1973 and not going beyond the authorised steps of military intervention.¹⁰⁵

On March 29, a conference on Libya was organised by the British Foreign Office in London. The *London Conference* was attended by more than forty foreign ministers and representatives from international and regional organisations, including United Nations Secretary General Ban Ki Moon, Secretary General of the Organisation of Islamic Cooperation (OIC) Dr Ekmeleddin Ihsanoglu, Foreign Ministers from Europe and NATO member states as well as Foreign

¹⁰² See: *NATO*, NATO and Libya, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹⁰³ Ibid.

¹⁰⁴ *NATO*, Statement by Anders Fogh Rasmussen on Libya, 27 March 2011, available at: http://www.nato.int/cps/en/natolive/news_71808.htm (4 May 2014).

¹⁰⁵ See: *ibid.*

Ministers from key regional countries such as Iraq, Jordan, UAE, Morocco, Lebanon and Tunisia.¹⁰⁶

In his Chair Statement, Foreign Secretary William Hague emphasized the need for a military intervention in Libya which would help to implement UNSCR 1970 and 1973. Furthermore, he announced the establishment of a *Libyan Contact Group* which should “provide leadership and overall political direction to the international effort in close coordination with the UN, AU, Arab League, OIC, and EU to support Libya”¹⁰⁷. Hague explained that the North Atlantic Council would provide the executive political direction to NATO operations alongside with its coalition partners.¹⁰⁸

NATO finally took sole command and control over the existing coalition of air operations on March 31. The international military action would now continue under *Operation Unified Protector*.¹⁰⁹ The ‘coalition of the willing’, which committed military assets to the operation, consisted of the NATO members Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, the Netherlands, Norway, Romania, Spain, Turkey, the U.K. and the U.S. as well as of Qatar and the United Arab Emirates, both members of the Arab League. Sweden, not a member of NATO, but a Member State of the EU, also joined the operation.¹¹⁰ According to official statements, the alliance

¹⁰⁶ See: *Foreign & Commonwealth Office of the United Kingdom*, London Conference on Libya, 28 March 2011, available at: <https://www.gov.uk/government/news/london-conference-on-libya> (4 May 2014).

¹⁰⁷ *British Government*, Statement from the conference Chair Foreign Secretary William Hague following the London Conference on Libya, 29 March 2011, available at: <https://www.gov.uk/government/news/london-conference-on-libya-chairs-statement> (4 May 2014).

¹⁰⁸ See: *ibid.*

¹⁰⁹ See: *ibid.*

¹¹⁰ See: *Taylor*, Military Operations in Libya, House of Commons Library, last updated on 24 October 2011, p. 16, available at: http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEsQFjAE&url=http%3A%2F%2Fwww.parliament.uk%2Fbriefing-papers%2F%2FSN05909.pdf&ei=68SRU-XfG8vP4QSD-oC-QAg&usg=AFQjCNHn9gLI5_3PhrWD7Mkti9hALgXZQQ&bvm=bv.68445247,d.bGE&cad=rja (5 May 2014).

consulted closely with the UN, the League of Arab States and other international partners throughout the military intervention.¹¹¹

On April 14, NATO allies and their operational partners contributing to *Operation Unified Protector* met in Berlin in order to discuss further action against Libya.¹¹² The foreign ministers agreed to continue the operation until the Gaddafi regime would stop all attacks against civilians and would withdraw all military and para-military forces to the bases.¹¹³ On June 8, NATO defence ministers reaffirmed the goals defined on the Berlin meeting, showing readiness to keep pressure on the Gaddafi regime for as long as it might take.¹¹⁴

After the opposition forces had taken over Tripoli on August 22, Rasmussen endorsed the commitment of the coalition to protect Libyan civilians and encouraged the Libyan people to decide on their own about their future through peaceful and democratic means.¹¹⁵ On the *Friends of Libya Summit* in Paris on September 1, heads of states and governments reaffirmed this commitment one more time.

On September 16, the UN Security Council adopted Resolution 2009 (2011) establishing a United Nations Support Mission in Libya (UNSMIL) which should

“assist Libyan national efforts to restore public security, promote the rule of law, foster inclusive political dialogue and national

¹¹¹ See: *NATO*, NATO and Libya, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹¹² See: *NATO*, In Berlin, NATO Allies and Partners show unity and resolve on all fronts, 14 April 2011, available at: http://www.nato.int/cps/en/natolive/news_72775.htm? (4 May 2014).

¹¹³ See: *German Foreign Office* (Auswärtiges Amt), NATO Außenminister treffen sich in Berlin, 15 April 2011, available at: <http://www.auswaertiges-amt.de/DE/Aussenpolitik/Friedenspolitik/NATO/110414-AM-Treffen-Beginn-node.html> (4 May 2014).

¹¹⁴ See: *NATO*, NATO and Libya, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹¹⁵ See: *NATO*, Statement by the Secretary General on the situation in Libya, 22 August 2011, available at: http://www.nato.int/cps/en/natolive/news_77345.htm (4 May 2014).

reconciliation, and embark on constitution-making and electoral processes”¹¹⁶.

Furthermore, it reasserted its mandate to protect civilians in Libya by lifting the arms embargo imposed on the Gaddafi regime and asset freeze targeting persons connected to the government.¹¹⁷

On October 6, NATO defence ministers discussed the prospects of ending *Operation Unified Protector*. They agreed on ending the operation as soon as there were no longer persistent threats to the Libyan population. Rasmussen assured to coordinate the end of the military operations with the United Nations and the new Libyan authorities.¹¹⁸

After the fall of Sirte and the death of Muammar al Gaddafi on 20 October¹¹⁹, the North Atlantic Council decided to end *Operation Unified Protector* at the end of October.¹²⁰ Until that day, NATO continued to observe the situation in Libya and kept hold of the capacity to intervene in case of threats to civilians.¹²¹

One week later, NATO confirmed the decision to end the *Operation Unified Protector*.¹²² It finally ended on October 31, 222 days after the beginning of the operation.¹²³

¹¹⁶ UNSCR S/RES/2009 (2011), 16 September 2011.

¹¹⁷ Ibid.

¹¹⁸ See: *NATO, NATO and Libya*, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹¹⁹ See: *New York Times*, “Battle for Libya”, 20 October 2011, available at: <http://www.nytimes.com/slideshow/2011/10/20/world/africa/20111021-LIBYA-8.html> (3 May 2014).

¹²⁰ See: *NATO, NATO and Libya*, available at: http://www.nato.int/cps/en/natolive/topics_71652.htm?selectedLocale=en (3 May 2014).

¹²¹ See: *ibid.*

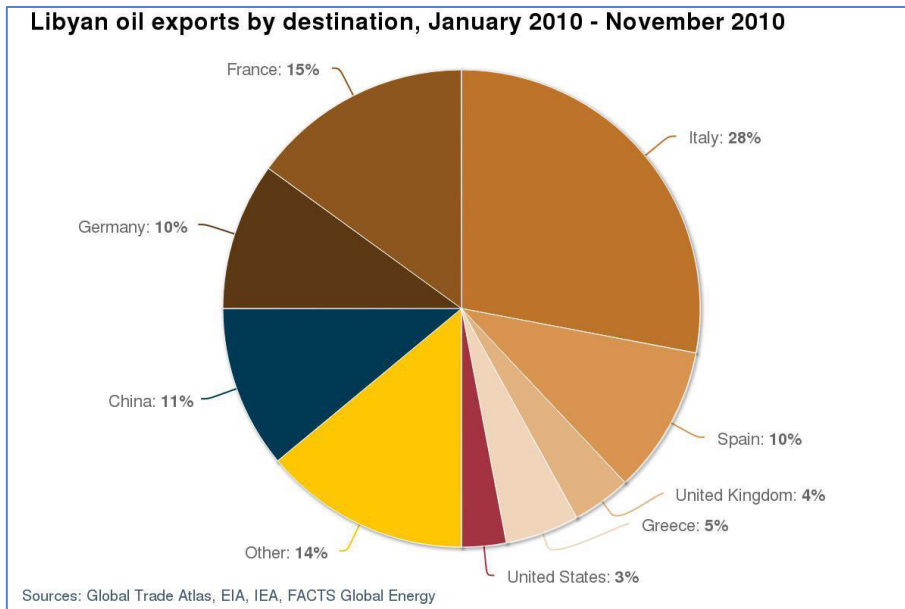
¹²² See: *ibid.*

¹²³ *NATO, Operation Unified Protector Final Mission Stats*, 2 November 2011, available at: http://www.nato.int/nato_static/assets/pdf/pdf_2011_11/20111108_111107-factsheet_up_factsfigures_en.pdf (4 May 2014).

3.3 The European Union's response¹²⁴

In the years before the Libyan crisis in February 2011, the European Union, similar to the U.S., had been conducting a policy of engagement with the Libyan government under Muammar al Gaddafi. According to the *U.S. Energy Information Administration* the vast majority of Libya's oil was sold to European countries in 2010.

Figure I. Libyan oil exports by destination, January 2010 – November 2010



Sources: *U.S. Energy Information Administration*, "Libya is a major energy exporter, especially to Europe", Independent Statistics and Analysis, available at: <http://www.eia.gov/todayinenergy/detail.cfm?id=590> (12 May 2014).

In the year before the uprisings, Italy, France, Germany and Spain were the major consumers of Libyan oil. Also other EU Member states profited from the Southern Neighbour's oil supply, such as the

¹²⁴ Since this paper is explicitly dealing with the reaction of the European Union to the Libyan crisis, it is important to separate its reaction from the reaction of other states and international or regional organizations to the uprisings. Due to this fact, this paper had to suffer the loss of a chronological illustration of the happenings in the Libyan crisis. However, the author tries to present the correlation between EU decisions and other decisions taken on the international level, especially in the UN and NATO fora.

United Kingdom and Greece (see Figure I above). The example of the EU oil consumptions shows the deep economic ties between EU member states and Libya.

Since November 2008, the EU and Libya were negotiating terms of a Framework Agreement which should have led to a Free Trade Agreement concerning trade in goods, services and investment.¹²⁵ These negotiations were suspended in line with the first EU sanctions on the Libyan regime as a reaction to the crisis.¹²⁶

3.3.1 Restrictive measures

Two days after the adoption of UNSC Resolution 1970 on February 26, the foreign ministers of the European Union Member States met in Brussels in order to deliberate on the situation in Libya and a possible implementation of the UN Resolution. The Council of the European Union, referring to Article 29 TEU as well as to UNSCR 1970, decided on restrictive measures against the Libyan regime.¹²⁷ These measures included:

- a) embargo on equipment which might be used for internal repression
- b) prior information requirement on cargoes to and from Libya
- c) restrictions on admission of listed natural persons
- d) freezing of funds and economic resources of listed persons, entities and bodies

¹²⁵ See: *European Commission official website*, Trade, Policy, Countries and regions, Libya, available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/libya/> (5 May 2014).

¹²⁶ See: *ibid.*

¹²⁷ See: *Council of the European Union press release*, “Libya: EU imposes arms embargo and targeted sanctions”, 28 February 2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119524.pdf (5 May 2014).

- e) prohibition to grant certain claims to listed persons and entities and any other persons and entities in Libya, including the government of Libya.¹²⁸

The sanctions such as visa bans and asset freeze were targeting 26 individuals responsible for the violent crackdown on Libya's civilian population, amongst others the Gaddafi family. The Council decision was finally declassified on March 3.¹²⁹

On March 11, the Council extended its restrictive measures by freezing the funds and economic resources of five key Libyan financial entities. Moreover, the Council added further names to the list of individuals subject to assets freeze.¹³⁰

On the same day, the Heads of State or Government of the EU called an extraordinary meeting of the European Council in order to set a political direction for future EU policy and actions in the Southern Neighbourhood.¹³¹ As regards Libya, the European Council expressed grave concern about the gross violation of human rights from the part of the Gaddafi regime as well as about the migration and refugee flows which come along with situation.¹³² The Heads of State or Government assured that the EU would support all steps towards a democratic transformation in Libya and examine all necessary options, "provided that there is a demonstrable need, a clear legal basis and support from the region"¹³³, in order to protect the civilian population in Libya.¹³⁴

In its *Conclusions on Libya* from March 27, the Council of the European Union referred to the guidelines of the European Council.

¹²⁸ See: *European Commission*, Restrictive measures in force, last updated on 29 January 2014, available at: http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf (5 May 2014).

¹²⁹ See: Council Decision 2011/137/CFSP (OJ L 58/53, 3.3.2011).

¹³⁰ See: Council Implementing Decision 2011/156/CFSP (OJ L 64/29, 11.3.2011).

¹³¹ See: European Council Declaration EUCO 7/11, 11 March 2011.

¹³² See: *Ibid.*

¹³³ *Ibid.*, paragraph 6.

¹³⁴ See: *Ibid.*

Furthermore, the Council commented UNSCR 1973 which has been adopted four days earlier.¹³⁵ Firstly, it recalled the UNSC decision to refer the human rights violation in Libya to the International Criminal Court. Secondly, it stressed its determination to contribute to the implementation of UNSCR 1973. However, the Council hinted at the fact that the EU Member States might contribute to the implementation in a “differentiated way”¹³⁶ acting “collectively and resolutely, with all international partners, particularly the Arab League and other regional stakeholders”¹³⁷. In order to protect civilian populated areas under threat of attack, the EU would continue to provide humanitarian assistance and support this assistance with CSDP measures, if requested from OCHA and “under the coordinating role of the UN”¹³⁸. Finally, the Council asked the High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton to develop a further planning on humanitarian assistance in close coordination with the UN, NATO and others.¹³⁹

On the same day, the Council adopted Decision 2011/175/CFSP which amended the list of persons and entities subject to restrictive measures published in its earlier decision.¹⁴⁰ With this amendment, the EU answered to the broader scope of restrictive measures against the Libyan regime mandated by UNSCR 1973.¹⁴¹ It banned all flights from the Libyan air-space as well as Libyan aircraft in EU’s airspace. Furthermore, it strengthened the enforcement of the arms embargo and extended the visa ban and asset freeze to additional persons listed in UNSCR 1973.

On April 1, one day after the NATO had officially taken over the command over the military operation in Libya, the Council decided on

¹³⁵ See: Council Conclusions on Libya 8017/11, paragraph 2, 21 March 2011.

¹³⁶ Council Conclusions on Libya 8017/11, paragraph 2, 21 March 2011.

¹³⁷ Ibid.

¹³⁸ Ibid, paragraph 4. and 5.

¹³⁹ See: *ibid.*

¹⁴⁰ See. Council Decision 2011/175/CFSP (OJ L 76/95, 22.3.2011).

¹⁴¹ See: Council of the European Union press release 8110/11 79, 24. March 2011.

its own operation in support of humanitarian assistance operations.¹⁴² Operation *EUFOR Libya* should be conducted in the framework of the Common Security and Defence Policy, if requested by the UN Office for Coordination of Humanitarian Affairs. In detail, the operation would “contribute to the safe movement and evacuation of displaced persons”¹⁴³ and “support, with specific capabilities, the humanitarian agencies in their activities”¹⁴⁴.

On April 12, the Council finally implemented its amended Decision 2011/137/CFSP from February 28.¹⁴⁵ On May 18, the Council added further names of persons and entities subject to restrictive measures.¹⁴⁶ On June 8, the Council made additional exception to the freezing funds and economic resources and amended the lists of persons and entities subject to these provisions.¹⁴⁷ The implementing decision followed on June 17.¹⁴⁸

In its Implementing Decisions 2011/500/CFSP, 2011/521/CFSP, 2011/543/CFSP, the Council further amended its lists.

In its Decision from September 22 the Council adopted additional exceptions to the arms embargo and it repealed the ban on flights of Libyan aircraft in the airspace of Libya.¹⁴⁹ Moreover, it repealed the freezing of certain funds and economic resources of certain legal persons, entities or bodies and amended the lists of persons, entities and bodies subject to freezing of funds and economic resources.¹⁵⁰

On November 11, the EU repealed the ban on all flights in the airspace of Libya.¹⁵¹

¹⁴² See: Council Decision 2011/210/CFSP (OJ L 89/17, 5.4.2011).

¹⁴³ Council Decision 2011/210/CFSP (OJ L 89/17, 5.4.2011).

¹⁴⁴ Ibid.

¹⁴⁵ See: Council Implementing Decision 2011/236/CFSP (OJ L 100/58, 14.4.2011); Notice to listed persons, entities and bodies (OJ C 116/2, 14.4.2011).

¹⁴⁶ See: Council Regulation (EU) 204/2011 (OJ L 58/1, 2.3.2011).

¹⁴⁷ See: Council Decision 2011/332/CFSP (OJ L 149/10, 8.6.2011).

¹⁴⁸ See: Council Implementing Decision 2011/345/CFSP (OJ L 159/93, 17.6.2011).

¹⁴⁹ See: Council Decision 2011/625/CFSP (OJ L 246/30, 23.9.2011).

¹⁵⁰ See: *ibid.*

¹⁵¹ See: Council Decision 2011/729/CFSP (OJ L 293/35, 11.11.2011).

3.3.2 *EUFOR Libya*

„Mission

1. With a view to **underpinning the mandates of United Nations Security Council Resolutions 1970 and 1973 (2011)**, the Union shall, **if requested** by the United Nations Office for the Coordination of Humanitarian Affairs (**OCHA**), conduct in the framework of the Common Security and Defence Policy a military operation, hereinafter called ‘*EUFOR Libya*’, **in order to support humanitarian assistance** in the region. The operation shall fully respect the Guidelines on the use of Military and Civil Defence Assets to support United Nations humanitarian activities in complex emergencies and the Guidance on the use of Foreign Military Assets to Support Humanitarian Operations in the Context of the Current Crisis in North Africa.”¹⁵²

As above-mentioned, the Council of the European Union decided to launch a military operation (*EUFOR Libya*) under the CSDP framework in order to support humanitarian assistance operations in Libya on 1 April 2011. However, the operation would only take place if requested by the UN Office for Coordination of Humanitarian Affairs (OCHA) run by Baroness Amos.

OCHA has never referred to the offer made by the EU. It is interesting to know why the UN Officials have never accepted the EU proposal to support humanitarian assistance operations and if this could have been foreseen by the EU. Regarding OCHA’s *Humanitarian Principles*, all humanitarian actions shall be guided by humanity, neutrality, impartiality and independence.¹⁵³ These four principles are based on two UN General Assembly resolutions, Resolution 46/182 (1991)¹⁵⁴ which endorsed the principles of humanity, neutrality and impartiality and Resolution 58/114 (2004)¹⁵⁵ which added the principle of

¹⁵² Council Decision 2011/210/CFSP (OJ L 89/17, 5.4.2011), accentuated by the author.

¹⁵³ See: OCHA, OCHA on Message: Humanitarian Principles, June 2012, available at: https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf (16 May 2014).

¹⁵⁴ General Assembly Resolution A/RES/46/182, 19 December 1991.

¹⁵⁵ General Assembly Resolution A/RES/58/114, 17 December 2013.

independence. According to OCHA, effective humanitarian coordination shall always comply with this philosophy.¹⁵⁶

The principle of “independence” is deciding in the case at hand. Official OCHA documents explain this rule as follows: “Humanitarian action must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented”¹⁵⁷.

OCHA demands the differentiation between humanitarian actions and other actions made by political or military actors.¹⁵⁸ This explains why the UN officials were not in favour of the support of a military mission conducted by the political and military actor EU in the Libyan crisis. OCHA officials presumably did not want to risk a loss of their independence by militarizing and politicising their humanitarian assistance. Other than the commonly known “blue-helmet” peacekeepers, OCHA only coordinates civilian aid. The UN body is usually highly suspicious of working with troops of any type.¹⁵⁹

Regarding their different voting behaviour in the UNSC, it was surprising that France, the United Kingdom and Germany agreed on a common military operation in Libya under CSDP. Especially Germany’s strong support in the mission gives reason to a closer look on the EU Member States’ intentions in the situation.¹⁶⁰ At first glance, accepting the help of the EU to support humanitarian assistance with military means seems to be rather unlikely for OCHA.

¹⁵⁶See: *OCHA*, OCHA on Message: Humanitarian Principles, June 2012, available at: https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf (16 May 2014).

¹⁵⁷ Ibid.

¹⁵⁸ See: *ibid.*

¹⁵⁹ See: *Gowan*, “The EU and Libya: Missing in action in Misrata”, European Council on Foreign Relations, 31 May 2011, available at: http://ecfr.eu/content/entry/commentary_the_eu_and_libya_missing_in_action_in_misrata (12.05.14).

¹⁶⁰ The interests of the EU Member States behind the proposal of a common military mission (*EUFOR Libya*) under the CSDP framework will be discussed in Chapter 6 of this thesis, which will deal with a more sophisticated analysis of the behavior of the EU MS during the Libyan crisis from an intergovernmental perspective.

Presumably, EU officials knew about the low probability of an implementation of the suggested operation.

3.3 Reaction of the Member States

3.3.1 *French reaction*

The French President Nicolas Sarkozy was one of the first heads of states to condemn Gaddafi's actions against civilians. To the discontent of his colleagues from the EU, especially to High Representative Catherine Ashton who should speak for the EU with one voice, Sarkozy recognized the National Transitional Council as the sole representative of Libya on 10 March 2011.¹⁶¹ This unilateral approach towards the opposition group casted a damning light on the EU CFSP since an extraordinary Council meeting was scheduled one day later in order to develop a common strategy towards the NTC and the Libyan crisis. Furthermore, Sarkozy, together with the British Prime Minister David Cameron, decided to call for a no-fly zone over Libya in a joint letter addressed to Herman Van Rompuy, the president of the European Council, instead of coming up with this proposal on the meeting of the European Council on the forthcoming day.¹⁶²

Sarkozy wanted to show the public that the enforcement of the no-fly zone was his idea, and not an idea of the European Union. If he had waited until the next day, this idea would have either been presented as a European one, not knowing who was the leading force, or would not have been mentioned at all. With the joint letter to the European

¹⁶¹ See: *Cowell/Erlanger*, "France Becomes First Country to Recognize Libyan Rebels", *New York Times*, 10 March 2011, available at: http://www.nytimes.com/2011/03/11/world/europe/11france.html?_r=0 (12 May 2014).

¹⁶² See: *Cameron/Sarkozy*, Letter from David Cameron and Nicolas Sarkozy to Herman Van Rompuy, *The Guardian*, 10 March 2011, available at: <http://www.theguardian.com/world/2011/mar/10/libya-middleeast> (10 May 2014).

Council, Sarkozy and Cameron showed their strong approach towards Libya without excluding their European or international allies.

As could have been expected, the two leaders could not persuade their colleagues to endorse a no-fly zone over Libya on the extraordinary Council meeting. It became clear that the Member States were divided over the approach towards the Libyan crisis and that they would not agree on a common mission under the CSDP framework.

Two days after the UNSC Resolution 1973 had been adopted, Sarkozy invited heads of states and governments to a Paris Summit for Libya in order to deliberate on an implementation of the Resolution.¹⁶³ The same day, the French President announced a military intervention in Libya with France's participation. Sarkozy tried to convince Cameron to set-up an Anglo-French command for the military operation. However, Cameron preferred to hand over the lead to NATO. On 31 March 2011, NATO took sole command of all military actions under Operation *Unified Protector*. France engaged in this operation by committing military assets.¹⁶⁴

3.3.2 German reaction

Germany was one of first European countries which condemned the violent actions of the Gaddafi regime against civilians and stood up for hard sanctions against the regime under the EU framework. After the adoption of UNSC Resolution 1970, Foreign Minister Guido Westerwelle called for strong sanctions against the regime, including the asset freeze of Gaddafi and his supporters. In opposition to France and the UK, Germany was not in favour of enforcing a no-fly zone over Libya, worrying about the possible consequences for the civilian population. On the EU summit on 11 March 2011, Chancellor Angela

¹⁶³ *U.S. Department of State*, Paris Summit for the Support to the Libyan People: Communique, 19 March 2011, available at: <http://www.state.gov/p/eur/rls/or/158663.htm> (26 May 2014).

¹⁶⁴ See: *Taylor*, *Military Operations in Libya*, p. 15.

Merkel warned about hasty decisions concerning a military intervention and called upon elaborated action.¹⁶⁵ Moreover, she was not pleased about France's unilateral approach towards the Libyan opposition forces. On the European Council meeting, Germany thus blocked the Anglo-French proposal to support a no-fly zone over Libya.

On 17 March, Germany abstained from the vote on UNSC Resolution 1973, which provoked a lot of international criticism, especially from its NATO allies and European partners. Not voting in favour of a proposal made by France and Great Britain in the SC demonstrated the EU's incoherence in foreign and security matters. In his speech in front of the German Bundestag one day after the abstention, Guido Westerwelle explained the reasoning behind this decision. After having weighted up all pro and con arguments, the German government decided that the risk of civilian victims was too high when intervening militarily. However, the Foreign minister expressed his support for his allies and partners and stated that Germany would support the Libyan people through political, economical, financial and humanitarian assistance. Westerwelle put emphasis on the fact that Germany supported many points of the UNSCR 1973, such as tightening sanctions against the Gaddafi regime as well as forwarding the case to the International Criminal Court. However, it is the provisions on the establishment of a no-fly zone and in particular the deployment of military force beyond that provision which made Germany abstain from the resolution.¹⁶⁶

¹⁶⁵ See: *Stern*, "Sarkozy will "gezielte Aktionen" in Libyen", 11 March 2011, available at: <http://www.stern.de/politik/ausland/eu-gipfel-sarkozy-will-gezielte-aktionen-in-libyen-1662505.html> (14 May 2014).

¹⁶⁶ See: *Westerwelle, Guido*, Policy statement by Foreign Minister Guido Westerwelle in the German Bundestag on current developments in Libya (UN Resolution), Federal Foreign Office, 18. March 2011, available at: http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Reden/2011/110318_BM_Regierungserkl%C3%A4rung_Libyen.html (25 May 2014).

After the abstention in the UNSC it was clear that Germany would neither take part in the enforcement of a no-fly zone proposed by France and Britain nor in a military operation under NATO command. Despite domestic and international criticism¹⁶⁷, Westerwelle supported Germany's decision not to participate in any military intervention referring to the critique from members of the Arab League towards the military action in Libya.¹⁶⁸

However, Germany did not veto the NATO proposal to take sole command of all operations in Libya. The German government knew that it could not provoke more discontent from its allies and would therefore not interfere with NATO's effectiveness.¹⁶⁹

4. Liberal intergovernmentalist analysis

In the following, the reaction of the EU and its Member States to the Libyan crisis will be analyzed from a liberal intergovernmentalist perspective. *Moravcsik's* two stage process of decision-making will be applied to the decisions taken on the European and international level as a reaction to the uprisings in Libya. Firstly, the state preferences of the EU Member States during the time of the crisis will be illustrated. In order to present the main opponent approaches in the EU, the state preferences of France and Germany will be given as an example.

¹⁶⁷ See for domestic critic e.g.: *Spiegel Online*, "Libyen-Politikfiasko: Fischer rechnet mit Nachfolger Westerwelle ab", 27 August 2011, available at: <http://www.spiegel.de/politik/deutschland/libyen-politikfiasko-fischer-rechnet-mit-nachfolger-westerwelle-ab-a-782882.html> (25 May 2014); see for international critic e.g.: *Lemaître/Van Renterghem*, "Le malaise allemand", *Le Monde*, 2 April 2011, available at: http://www.lemonde.fr/europe/article/2011/04/02/le-malaise-allemand_1502130_3214.html (25 May 2014).

¹⁶⁸ See: *Ash*, "France plays hawk, Germany demurs. Libya has exposed Europe's fault lines", *The Guardian*, 24 March 2011, available at: <http://www.theguardian.com/commentisfree/2011/mar/24/france-hawk-germany-demurs-libya-europe> (25 May 2014).

¹⁶⁹ See: *Keller*, *Germany in NATO: The Status Quo Ally*, p. 106.

Secondly, the three principles of interstate negotiations will be applied to negotiations during the Libyan crisis.

4.1 Configuration of state preferences in the Libyan crisis

When applying the liberal intergovernmentalist approach to the reaction of the EU to the Libyan crisis, one first has to analyze the process of the building of state preferences. Since the preferences of 27 EU Member States were involved in the strategic negotiations over Libya and the Gaddafi regime, it is not surprising, that the EU did not react with its hard power tools but rather with small steps of sanctions. In order to present an exemplary overview over different Member State's preferences in the decision-making processes during the Libyan crisis, the author will only concentrate on two actors, namely France and Germany. The analysis of the reaction of all 27 Member States of the EU to the crisis would not be possible given the scope of this thesis. The analysis will concentrate on France and Germany because of different reasons:

First of all, France and Germany are one of the strongest economic powers in the EU and are said to be two of the "big three" in decision-making processes in the EU.

Secondly, the two states were both representing the European Union in the United Nations Security Council during the Libyan crisis and were involved in the adoption of UNSCR 1970 and 1973.

Thirdly, France and Germany are both members of the North Atlantic Treaty Organization and were thus more or less involved in the NATO intervention in Libya.

Fourthly, France and Germany formed two blocks in the EU's reaction to the Libyan crisis: While France was one of the first countries to ask for a military intervention in Libya, Germany represented an entirely different position abstaining from UNSCR 1973 (2011) as well as from the NATO operation *Unified Protector*.

This discord between the two major players of the EU in CFSP matters is particularly interesting given the fact that the German-French cooperation is said to be the driving motor of European integration. It demonstrates the lack of coherence in the Union's foreign policy and opens the door for a deeper analysis of the EU CFSP from the inter-governmentalist perspective.

Moravcsik claims that state preferences are shaped by the democratic processes within a nation state and different domestic interest groups.¹⁷⁰ Before entering into international negotiations, states first define a set of interests which they want to represent.¹⁷¹ From this follows that objectives in the foreign policy of a state can vary from situation to situation. In the following the different factors which have influenced the building of state preferences of France and Germany in the time of the Libyan crisis will be discussed.

4.1.1 *France's state preferences*

Nicolas Sarkozy served as French president from May 2007 until May 2012. Thus, the Libyan crisis started four years after the beginning of his turn in office and one year before the new presidential elections.

Before his presidency, Sarkozy was the leader of the conservative party UMP. The UMP is known for its emphasis on the need of a strong defence policy and high military spending. Its supporters want France to have a strategic geopolitical position and to play a leading role in world politics. According to the UMP, a highly developed defence is a sign of France's sovereignty and independence as well as the most important element of the foreign and even economic policy of the state.¹⁷² The conservatives see France as a world power refer-

¹⁷⁰ See: *Moravcsik*, Preferences and Power in the European Community, p. 473.

¹⁷¹ See: *ibid.* p. 481

¹⁷² See: *UMP*, Les Etats généraux de l'UMP, Défense – une défense forte, un atout pour la France, available at: http://www.u-m-p.org/sites/default/files/media/documents/2014-03-19_-_etats_generaux_-_defense.pdf (21 May 2014).

ring to its history, its seat in the UNSC and a strong defence including nuclear power. They expect France to shape international politics by all necessary means, including the use of force. France should not just act regionally but widen its field of operations in order to help solving problems worldwide, especially where France's strategic interests are involved.¹⁷³

Ten days after the uprisings had started in Libya, the feeling of the French citizens about the revolutions in different Arab countries was surveyed. In opposition to supporters of the left wing party, the partisans of the UMP and other right wing parties had a feeling of fear and concern towards the events in the Southern neighbourhood (61%) rather than seeing them as a sign of hope (30%).¹⁷⁴

A poll conducted only a couple of days after the UNSC Resolution 1973 had been adopted and the Gaddafi regime had started to fight demonstrators by air forces shows that a majority of the French society was in favour of a military intervention in Libya (66%).¹⁷⁵ It is notable that the intervention was supported by all categories of the French population without any exception. This means that the majority of young and old people, employees and employers and partisans of all political parties supported the decision of the government.¹⁷⁶ A poll in the beginning of April reaffirmed the support of the French for their government and its involvement in the military coalition.¹⁷⁷

¹⁷³ See: *UMP, Les Etats généraux de l'UMP, Défense – une défense forte, un atout pour la France*, available at: http://www.u-m-p.org/sites/default/files/media/documents/2014-03-19_-_etats_generaux_-_defense.pdf (21 May 2014).

¹⁷⁴ See: *Institut français de l'opinion public (IFOP), Les Français et les révolutions dans les pays arabes*, 27 February 2011, available at: http://www.ifop.com/media/poll/1414-1-study_file.pdf (22 May 2014).

¹⁷⁵ See: *Institut français de l'opinion public (IFOP), Les Français et la légitimité d'une intervention militaire en Libye*, 23 March 2011, available at: http://www.ifop.com/media/poll/1441-1-study_file.pdf (21 May 2014).

¹⁷⁶ See: *ibid.*

¹⁷⁷ See: *Institut français de l'opinion public (IFOP), Les Français et la légitimité d'une intervention militaire en Libye*, 3 April 2011, available at: http://www.ifop.com/media/poll/1441-1-study_file.pdf (21 May 2014).

In the months before the intervention in Libya, Nicolas Sarkozy's approval ratings were at an all-time low. A poll from January 2011 shows that only 34% of the French population approved his actions as French president.¹⁷⁸ Since his victory in the presidential elections in May 2007, the amount of citizens favouring Sarkozy's actions has been continuously declining.¹⁷⁹ Comparing different policy fields, the majority of the French population was in favour of the foreign policy of the president in January 2011 (67%). However, most of the citizens denied his internal policies, especially the social policies (32%).¹⁸⁰

In addition to the critique on his performance in internal affairs, Sarkozy had to face different scandals concerning his entourage in late December 2010 and the beginning of 2011. Foreign Minister Michèle Alliot-Marie spent her Christmas holidays in Tunisia, where the uprisings against the ruling Ben Ali regime had already begun. She flew on a private jet belonging to Tunisian businessmen, Aziz Miled, who was said to have close links to the regime.¹⁸¹ In the same time, her parents were involved in a business deal with Miled. Back in France, the foreign minister suggested to assist the Tunisian security forces in order to manage the situation emerging by uprisings, a suggestion which was highly criticized by the public.¹⁸² Bearing the consequences of the public scandal, Michèle Alliot-Marie finally resigned from her post as foreign minister on 27 February 2011.¹⁸³

¹⁷⁸ See: *Institut français de l'opinion public (IFOP)*, *Le tableau de bord politique Paris Match*, 13 Janvier 2011, available at: http://www.ifop.com/media/poll/1376-1-study_file.pdf, (21 May 2014).

¹⁷⁹ See: *ibid.*

¹⁸⁰ See: *ibid.*

¹⁸¹ See: *Le Monde*, "Aziz Miled, l'ami tunisien d'Alliot-Marie, victime ou complice du régime ?", 2 February 2011, available at: http://www.lemonde.fr/politique/article/2011/02/02/aziz-miled-l-ami-tunisien-d-alliot-marie_1473855_823448.html (23 May 2014).

¹⁸² See: *Le Monde*, "Tunisie : les propos \"effrayants\" d'Alliot-Marie suscitent la polémique", 13 January 2011, available at: http://www.lemonde.fr/afrique/article/2011/01/13/tunisie-les-propos-effrayants-d-alliot-marie-suscitent-la-polemique_1465278_3212.html (23 May 2014).

¹⁸³ See: *Willsher*, "French foreign minister resigns", *The Guardian*, 27 February 2011, available at: <http://www.theguardian.com/world/2011/feb/27/french-foreign-minister-resigns> (23 May 2013).

After the scandal concerning the foreign minister, the French government had to grapple with another disgrace. Prime Minister Francois Fillon was invited on his New Year's vacation with his family by the Egyptian President Hosni Mubarak, who sponsored free lodging, a plane flight and a boat cruise on the Nile.¹⁸⁴

Both these scandals revealed the unhealthy personal proximity between the French government and the autocratic leaders in their Southern Neighbourhood, especially to France's former colonies.¹⁸⁵ The government was highly criticized by the media and the opposition parties, which claimed that the political leaders had lost their feeling for public opinion.¹⁸⁶ The president was more and more pressurized and needed an achievement in order to make the headlines with successful news.

The respective polls of public opinion as well as the media reports from the beginning of the year 2011 reveal a lot about the national preferences during that time. The majority of the French society wished for a stronger government which would not only make empty promises or embarrass the country but which would take concrete action in order to help the population in the Arab countries. The citizens rejected the close relationship between the government and autocratic leaders in North African countries and asked for a more concrete reaction towards the revolutions of the Arab Spring.

The fact that the majority of the French population was in favour of an intervention in Libya can be explained by the strategic culture of the

¹⁸⁴ See: *France 24*, "French PM joins minister aboard 'Air Dictator' scandal", 9 February 2011, available at: <http://www.france24.com/en/20110209-france-fillon-prime-minister-foreign-minister-mam-egypt-holiday-air-dictator-scandal-tunisia/> (23 May 2014).

¹⁸⁵ See: *Célestin/Hargreaves/Dalmolin*, Editors' introduction: Business as usual?, in: *Contemporary French and Francophone Studies*, vol. 13, no. 3, 2012, p. 293-298, p. 296.

¹⁸⁶ See: *Spiegel Online*, „Französischer Regierungschef: Fillon ließ sich Urlaub von Mubarak sponsern“, 8 February 2011, available at: <http://www.spiegel.de/politik/ausland/franzoesischer-regierungschef-fillon-liess-sich-urlaub-von-mubarak-sponsern-a-744426.html> (23 May 2014).

country.¹⁸⁷ France has been a great colonial power until World War II. Its geopolitical position was declining after the war with the result that France had to rely on aid from the U.S.A. under the Marshall plan. In the following years, France lost its colonial power in Indo-China and in Algeria. Furthermore, the former world power had to face a defeat in the conflict over the Suez Canal.

Charles de Gaulle, the general who led the Free French Forces in World War II, achieved to turn the national grief into self-confidence and pride after the May 1958 crisis. He was the main driving force to introduce a new constitution founding the Fifth Republic in 1958 and was elected [President of France](#) in the following year.

Ever since, the president determines the foreign policy of the nation. According to Article 15 of the Constitution of the Fifth Republic, the French president shall be the “Commander-in-Chief of the Armed Forces”. De Gaulle’s foreign policy strategy, commonly known as ‘Gaullism’, was marked by autonomy. The president wanted to demonstrate that France was still a great power and had a saying on the international scenery. Having once fought for France to become a member of the UNSC in 1945, de Gaulle always wanted the nation to take the leadership in international affairs. In his opinion, France should not rely on other powers, especially on the U.S.A., for its own security and prosperity, but act autonomously. This explains why he withdrew France from NATO military command and did not want Great Britain to enter into the European Community. France, being one of the founding states of the ECSC, did not want to share this position of power with a strong ally of the U.S. Even though France’s attitude towards the EU and NATO has changed over the years, the

¹⁸⁷ In this context ‘Strategic culture’ means that the decision for a military intervention does not only depend on military capacities or the international structure but rather on the normative and ethic cultural factors which form a state. Such factors are usually conditioned by historical events and are reflected in public opinion. To learn more about the term see: *Johnston*, Thinking about strategic culture, in: *International Security*, vol. 19, no. 4, 1995, p. 31-64; *Lantis*, Strategic Culture and National Security Policy, in: *International Studies Review*, vol. 4, no. 3, 2003, p. 87-113.

country has always tried to maintain its important role in international politics; especially in reaction to the U.S.¹⁸⁸ A form of anti-Americanism and the pursuit of independence from the “Big brother” is part of the strategic culture of the country.¹⁸⁹

France is generally in favour of multilateral cooperation through the UN where it holds a strong position due to the permanent seat in the Security Council.¹⁹⁰ Being one of the leading decision-making forces, France also favours cooperation in the EU. Furthermore, France has always wanted to build a military alliance in Europe outside of NATO. That is the reason why it has pushed the creation of a Common Security and Defence Policy within the EU.¹⁹¹

France’s strategic culture is influenced by the historical and geopolitical changes it had undergone in the 20th century. Charles de Gaulle is one of the most prominent leaders in the country’s modern history and is still much-lauded by French politicians. Especially the UMP often refers to the former French president, who re-established France as a strong geopolitical actor, when asking for a higher military spending and a stronger defence policy.¹⁹²

Regarding its philosophy and political direction it is not surprising that the conservative party UMP was in favour of a military intervention in Libya. However, as results from the polls, not only the supporters of the right wing party were favouring such an intervention. The whole

¹⁸⁸ See: *Irondele, Bastien/Mérand, Frédéric*, France’s return to NATO: the death knell for ESDP?, in: *European Security*, 19/1,2010, p. 29-43, p. 31.

¹⁸⁹ See: *Jolyon Howorth*, The Euro-Atlantic Security Dilemma: France, Britain, and the ESDP, in: *Journal of Transatlantic Studies*, 2005, p. 39-54, p. 40.

¹⁹⁰ See: *Irondele, Bastien/Besancon, Sophie*, (2010), France: A Departure from ‘Exceptionalism’, in: *Kirchner/Sperling* (eds.), *National Security Cultures: Patterns of Global Governance*, pp. 21-42, p. 24.

¹⁹¹ See: Joint Declaration issued at the British-French Summit, Saint-Malo, France, available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/French-British%20Summit%20Declaration,%20Saint-Malo,%201998%20-%20EN.pdf> (23 May 2014).

¹⁹² See: *UMP*, Les Etats généraux de l’UMP, Défense – une défense forte, un atout pour la France, p. 4, available at: http://www.ump.org/sites/default/files/media/documents/2014-03-19_-_etats_generaux_-_defense.pdf (21 May 2014).

population follows this interventionist culture, going beyond civilian power.

Lantis argues that public opinion is “an important part of the ideational milieu that defines strategic culture” especially in “parliamentary democracies, where government stability is founded directly upon popular support”.¹⁹³ Referring to this argument, Sarkozy would follow the public opinion in his decisions during the Libyan crisis in order to gain popular support.

The French president knew that his foreign policy was approved by the majority of the French population and that this policy field was his biggest strength. Furthermore, the majority of the population who supported him were from the UMP, who are generally in favour of military interventions. In all likelihood, Nicolas Sarkozy wanted to be re-elected in the following year; his main preference during the Libyan crisis was thus to gain more approval from the French population. Knowing that the approach of his government towards the uprisings in Tunisia and Egypt had been highly criticized, the French president was now willing to take any necessary measure in order to impress his voters and show a strong reaction towards the Libyan crisis.¹⁹⁴

Besides the domestic factors which influenced the building of state preferences, there were also external factors which contributed to Sarkozy’s strong reaction to the uprisings in Libya. On the international scenery, France has not been perceived as the independent global power it claimed to be. It did not attract much attention as a permanent member of the UN Security Council nor as a strong military power in the years before the Arab spring. The Libyan crisis was now the possibility to enhance its status and reputation on the

¹⁹³ *Lantis*, *Strategic Culture and National Security Policy*, p. 109.

¹⁹⁴ See: *Echagüe/Michou/Mikail*, *Europe and the Arab Uprisings: EU vision versus Member State Action*, in: *Mediterranean Politics*, vol. 16, no. 2, pp. 329-335, p. 333.

international stage.¹⁹⁵ Since France did not have as many historical and cultural ties with Libya as it had with Tunisia or Egypt, Sarkozy did not have to fear severe consequences of his rapid action. Even though France was also importing Libyan oil, the economic ties were not strong enough in order to preclude him from taking action.

In order to create a position which he would advocate in the intergovernmental negotiations, Sarkozy had to analyze the national preferences. It has been shown that the French population was asking for a strong engagement of the government in the Southern Neighbourhood. Given the interventionist strategic culture of the country, a military intervention with French participation was welcomed and even requested by the citizens. The French approved the foreign policy of the president and his self-confident behaviour on the international stage.

Sarkozy himself needed a strong approval of the French for the upcoming presidential elections, especially with view to his miserable ratings and the scandals concerning his cabinet. Furthermore, he wanted to demonstrate the international community that France was still an important global player.

After he had combined the national preferences with his own preference, the French president decided to suggest a military operation in Libya. Wanting to react even before the competitor U.S.A., he tried to start a military action as soon as possible. Only if France had been the leading force in the action, Sarkozy would have gained the credit he needed for the upcoming election. That is the reason why he was willing to start an operation even without the approval of his partners from the European Union. With this thought he entered the negotiations on the European and international level.

¹⁹⁵ See: *Chrisafis*, "Sarkozy hopes Libya can boost France's reputation – as well as his own", *The Guardian*, 1 September 2011, available at: <http://www.theguardian.com/world/2011/sep/01/sarkozy-libya-france-reputation-reelection> (24 May 2014).

Moravcsik's theory, that national preferences influence the strategy of governments in international negotiations is proven right in the example of state preference building of France in the Libyan crisis. However, the aspect of external factors, presented by *Stanley Hoffman* in his approach classical Intergovernmentalism, was very important in the French example. Not only the domestic preferences and interests influenced Sarkozy in his strategy. It was also the pressure from the geopolitical situation of France which influenced the behaviour of the government. The French president wanted France to be perceived as an important global player and himself as a strong charismatic leader by the international community.

In his theory of Liberal Intergovernmentalism, *Moravcsik* fails to further develop *Hoffmann's* idea of the importance of the government's global position in the development of national interests. This could be due to the fact that *Moravcsik* emphasizes the liberal aspect of his theory which is an opponent of the realist movement in classical International Relations theories.

4.1.2 *Germany's state preferences*

Due to its historical and geopolitical situation, Germany has developed a completely different strategic culture than France.¹⁹⁶ After the disaster of Nazism and World War II Germany has emerged as a pacifistic nation acting as a civilian rather than as a military power in international affairs. Ever since, Germany tries to find a balance between assertiveness and reservation in its foreign and defence policy, taking into consideration both domestic politics and strategic international alliances.

After World War II Germany's political restraint was welcomed and even demanded by the international community. During Cold War, Germany's foreign policy was shaped by the debate about more or

¹⁹⁶ See: *Mauil*, Deutsche Außenpolitik: Orientierungslos, in: Zeitschrift für Politikwissenschaft, pp. 95-119, p. 99.

In order to maintain its strong economic position, Germany holds strong bilateral relations with the BRIC countries, which are attracting German producers due to its emerging markets.²⁰² It is difficult for the export champion to keep all of its partners satisfied, especially with regard to the U.S. on the one hand, and Russia and China on the other hand. Furthermore, there are its European partners which wish for more German commitment on the European level. More and more of its allies claim that Germany would like to profit from stable economic relations without engaging in peace-forcing operations which might stabilize crisis regions.

Germany's position on the global scenery is thus very complicated. Due to its strong economical power, Germany is said to have a leading role within the European Union, also in matters of foreign and security policy. According to *Eckert* and *Nieberg*, the future of European integration, especially in the CFSP area, depends much on how Germany gets along with this new role and whether it is going to shape or decelerate the integration process.²⁰³ However, the German government cannot play an important role in international affairs without the approval of its citizens. Respective polls show that the German population might not be prepared to support Germany in this leading position.

The memory of the Nazi regime might be one explanation for the restraint of the Germans when it comes to the question of Germany being a strong military power. Since the end of World War II Germany's strategic culture has been shaped by pacifistic norms, values and principles. As a reaction to the changing security environment in the beginning of the 1990s, the German Constitutional Court took a decision in 1994 which allows the deployment of

²⁰² See: *Popławski*, Chasing Globalisation – Germany's Economic Relations with the BRIC countries, OSW report, available at: http://www.osw.waw.pl/sites/default/files/raport_05_bric_ang.pdf (26 May 2014).

²⁰³ *Eckert/Nieberg*, Deutschlands Rolle in Europa: Führungsmacht oder Vetospieler?, in: *Integration* 4/2011, p. 349-356, p. 351.

German troops abroad only with authorization by the Parliament (Bundestag).²⁰⁴

Other than in France, neither the head of state nor the head of government can take sole decisions on foreign and security matters. Even if the German chancellor has the right to determine the guidelines of German politics according to the German Grundgesetz (Art. 65 GG), he or she cannot decide to deploy the army to a foreign country without the approval of the parliament. Germany has a “parliamentarian army”, which means that all foreign deployment of the Bundeswehr has to be acknowledged by the Bundestag.²⁰⁵ History shows that the German parliamentarians need to have good reasons for voting in favour of a deployment.

Even though Germany has slowly started to engage in international operations in the 1990s, including military ones, the 2000s were shaped by a rather reluctant approach towards the foreign deployment of troops. *Ash* even compares the German attitude with the Swiss neutrality and “leave us alone” attitude.²⁰⁶ However, even if Germany has not deployed many troops since the 1990s, it has still participated in international security affairs with humanitarian aid as well as political, technical or financial assistance. The most popular German involvement in international security missions is the participation in the ISAF mission in Afghanistan. The lacking success of the deployment of German troops and the changing justifications for the NATO-led mission contributed to a delegitimation of military missions in the German society.²⁰⁷

Polls show that only the minority of the German population thinks that wars can under certain conditions create justice. The majority does not

²⁰⁴ See: Decision by the German Constitutional Court BVerfG, 12.07.1994 - 2 BvE 3/92; 2 BvE 5/93; 2 BvE 7/93; 2 BvE 8/93.

²⁰⁵ See: Parlamentsbeteiligungsgesetz vom 18. März 2005 (BGBl. I S. 775).

²⁰⁶ See: *Ash*, “France plays hawk, Germany demurs. Libya has exposed Europe’s fault lines”, *The Guardian*, 24 March 2011, available at: <http://www.theguardian.com/commentisfree/2011/mar/24/france-hawk-germany-demurs-libya-europe> (25 May 2014).

²⁰⁷ *Staak*, *Stimmhaltung bei der Libyen-Intervention*, p. 186.

accept the loss of soldiers and civilians because of military interventions, concerning their own nationals but also third states.²⁰⁸

With regard to the Libyan crisis, a slight majority of the German population was in favour of a military intervention in Libya by NATO forces (54%).²⁰⁹ However, 69% of the population welcomed the decision of the German government not to participate in the intervention.²¹⁰ These two polls show the ambivalence of the German society: the population favours humanitarian operations enforcing human rights, but do not want German soldiers to be involved in these kinds of military operations.

The German government under Chancellor Angela Merkel knew that the majority of the nationals was not in favour of a military participation in the Libyan crisis. Moreover, it was aware of the fact that it did not have persuasive arguments for a military intervention in Libya which would have convinced the German Bundestag to authorize such an operation. The government itself was not positive about the fact whether a no-fly zone in Libya would meet its target and lead to the protection of Libyan civilians.²¹¹

Especially with regard to the upcoming regional elections in Baden-Württemberg and Rhineland-Palatinate only ten days after the vote on UNSCR 1973 (2011), the German multi-party government consisting of a coalition of CDU/CSU and FDP wanted to obtain approval from the German population. Above all, the Free Democratic Party (FDP) was in need to win favour of the German society since its approval rate was at an all-time low. Polls in January 2011 show that the party

²⁰⁸ See: *Göler/Jopp*, L'Allemagne, la Libye et l'Union européenne, p. 420.

²⁰⁹ See: *Statista*, Poll: „In Libyen gibt es einen Bürgerkrieg. Staatschef Gaddafi greift unter anderem mit Flugzeugen seine eigenen Bürger an. Was denken Sie, sollte die NATO eingreifen oder die Sache den Libyern überlassen?“, available at: <http://de.statista.com/statistik/daten/studie/181571/umfrage/nato-einsatz-in-libyen/> (24 May 2014).

²¹⁰ See: *Statista*, Poll: „Halten Sie es für richtig, dass sich Deutschland nicht am Militäreinsatz in Libyen beteiligt?“, available at: <http://de.statista.com/statistik/daten/studie/182566/umfrage/meinung-ueber-eine-deutsche-beteiligung-am-militaereinsatz-in-libyen/> (24 May 2014).

²¹¹ See: *StaaK*, Stimmhaltung bei der Libyen-Intervention, p. 184.

would only have received 4 % of the votes and thus not be re-elected to the German Bundestag if there had been federal elections at that time.²¹² Foreign Minister Guido Westerwelle (FDP) was one of the most unpopular politicians in the country.²¹³ Westerwelle and the FDP, traditionally pacifist, hoped to gain votes by the abstention from voting to the UNSC Resolution. As foreign minister, Westerwelle had the chance of his lifetime to prove his individual pacifist ideology.

Even though its ratings were stable²¹⁴, the other government party, CDU/CSU, also needed positive results in the regional elections in order to have a strong position in the Federal Council (Bundesrat), especially with a view to the weak position of its coalition partner.

Hobolt and *Klemmensen* argue that multi-party governments are generally more vulnerable than one party governments and that they are consequently more responsive to public opinion and national preferences.²¹⁵ As seen by the respective polls, the German population was not in favour of an involvement in a military intervention in Libya. Trying to please the domestic public opinion and gain votes for the upcoming elections, the German government decided to abstain from UNSCR 1973 and from a participation in the NATO Operation *Unified Protector*. This decision can also be understood with view to the very vulnerable construction of the government coalition.

²¹² See: *Infratest dimap*, ARD Deutschlandtrend, January 2011, p. 17, available at: http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCsQFjAA&url=http%3A%2F%2Fwww.infratest-dimap.de%2Fuploads%2Fmedia%2Fdt1101_bericht.pdf&ei=BFyUU8brOMnfPbWMgSg&usq=AFQjCNFJSdX96vhFZ00p__796dxCvKF1Og&bvm=bv.68445247,d.ZWU&cad=rja (25 May 2014).

²¹³ See: *ibid.*, p. 15.

²¹⁴ See: *Infratest dimap*, ARD Deutschlandtrend, January 2011, p. 17, available at: http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCsQFjAA&url=http%3A%2F%2Fwww.infratest-dimap.de%2Fuploads%2Fmedia%2Fdt1101_bericht.pdf&ei=BFyUU8brOMnfPbWMgSg&usq=AFQjCNFJSdX96vhFZ00p__796dxCvKF1Og&bvm=bv.68445247,d.ZWU&cad=rja (25 May 2014).

²¹⁵ See: *Binzer Hobolt/Klemmensen*, *Responsive Government? Public Opinion and Government Policy Preferences in Britain and Denmark*, in: *Political Studies*, vol. 53, no. 2, 2005, pp. 379-402, p. 384.

However, in times of multilateral cooperation and strong international ties, many claim that the German government had to take into consideration not only the domestic preferences but also the opinion of its transatlantic and European partners. For the German political elite, it is usually difficult to find a balance between domestic and international pressure when it comes to the engagement in operations around the globe.

The German government has to face a difficult domestic strategic culture and calls from its partners for more commitment in international affairs. Being stuck between these two approaches, it is difficult for the government to formulate concrete strategies. The government itself has the interest to be re-elected without losing its face on the international scenery. Power is not only about the approval of the own citizens but also about the recognition and prestige among the international community.

Even at the risk of losing its face on the international scene, the German government decided to act in favour of the public opinion and not in favour of its international partners during the Libyan crisis. When the German government formulated the state preferences during the Libyan crisis it chose to vote in favour of the domestic preferences and not in favour of the external recognition. However, it might have hoped that its different voting behaviour in the UNSC would demonstrate Germany's power to decide on its own and its strong normative culture. The German government made clear that it would not adopt a resolution which is not in line with the opinion of its citizens only to please its partners. *Staak* argues, that the German government anticipated that its abstention to the voting on the Resolution would not lead to its failure, since the majority of 10 to 5 in the SC was presumed to be secured.²¹⁶ Thus, the government calculated the frictions with its allies to be not as serious as the depreciation by the majority of the German society. The Libyan crisis

²¹⁶ *Staak*, *Stimmhaltung bei der Libyan-Intervention*, p. 186.

showed that the German foreign policy is shaped more and more by the domestic interests and less by the alliance policy.²¹⁷

The question arises which states Germany considers as its partners in the 2010's. The emerging economies in the BRIC states are very attractive for the German market and could replace the U.S. and the European states in the question of economic ties in the next decades.²¹⁸ It could be possible that Germany abstained from vote on UNSCR 1973, as did all BRIC states, in order not to jeopardize its economic ties with these emerging powers.

Many journalists and politicians criticized the German approach as being naive and endangering Germany's position on the global stage.²¹⁹ *Ash* blamed Germany to rather follow than lead public opinion.²²⁰ *Cohen* characterized the German reaction as "nationalist calculation" and a nadir in German post-war diplomacy.²²¹ Referring to the undefined strategic goals of the German foreign and security policy, *The Economist* calls the German attitude "improvisation".²²² It claims that the German government "reacts to the situations as they arise" and does not have a real "grand strategy".

However, the majority of the citizens approved the approach of the government. This shows how influential domestic factors can be on the decision-making processes on the international level. The case of

²¹⁷ See: *Staak*, Stimmhaltung in der Libyen-Intervention, p. 187.

²¹⁸ See: *Popławski*, Chasing Globalisation – Germany's Economic Relations with the BRIC countries, OSW report, available at: http://www.osw.waw.pl/sites/default/files/raport_05_bric_ang.pdf (26 May 2014).

²¹⁹ See e.g.: *Brössler*, „Deutschland, das Riesenbaby der Weltpolitik“, *Süddeutsche Zeitung*, 12 April 2011, available at: <http://www.sueddeutsche.de/politik/die-aussenpolitik-von-merkel-und-westerwelle-deutschland-das-riesenbaby-der-weltpolitik-1.1083941> (26 May 2014).

²²⁰ See: *Ash*, "France plays hawk, Germany demurs. Libya has exposed Europe's fault lines", *The Guardian*, 24 March 2011, available at: <http://www.theguardian.com/commentisfree/2011/mar/24/france-hawk-germany-demurs-libya-europe> (25 May 2014).

²²¹ *Cohen*, „France Flies, Germany Flops“, *International New York Times*, 16 April 2011, available at: http://www.nytimes.com/2011/04/17/opinion/17cohen.html?_r=0 (25 May 2014).

²²² *The Economist*, "The unadventurous eagle", 12 May 2011, available at: <http://www.economist.com/node/18683155> (25 May 2014).

the building of state preferences in Germany during the Libyan crisis shows most exemplarily how domestic interests and preferences can influence highly important decisions taken by governments on the intergovernmental level. Thus, *Moravcsik's* theory is proven right in this example. The geopolitical situation of Germany played a rather unimportant role in the development of a strategy of the German government. With its abstention in the UNSC, Germany publically demonstrated that it was not willing to endanger national preferences in favour of a commitment towards its allies and partners.

4.2 Interstate Negotiations

After the configuration of the different state preferences, France and Germany met in different international fora to negotiate their interests. The representatives of the governments tried to realize their state preferences through cooperation and coordination with other states.

According to *Moravcsik*, these intergovernmental negotiations are shaped by strategic-rational bargaining, where the own power position compared to the others plays an important role.²²³

In the following, *Moravcsik's* three core principles of the 'supply-side', *Intergovernmentalism*, *Lowest-common-denominator bargaining* and *Strict limits on future transfers of sovereignty*, will be applied to the interstate negotiations during the Libyan crisis. The focus will lie on the negotiations between EU Member states and its decisions taken on the European level. Since some Member States of the EU, namely France, Germany and the UK were also involved in the decision-making procedures on UN level, these negotiations will be also briefly touched in the analysis. Given its broad theoretical framework, *Moravcsik's* theory of Liberal intergovernmentalism can be applied to any forum of interstate negotiations.

²²³ See: *Grimmel/Jakobeit*, Politische Theorien der Europäischen Integration, p. 193.

4.2.1 Intergovernmentalism

Moravcsik claims that decisions affecting the core policies of a state, such as security and defence policy, are taken on an intergovernmental level. This is the case for the three fora in which the state preferences were negotiated during the Libyan crisis: the UN Security Council, the European Council and the Council of the European Union.

It is not surprising that decisions taken in the UNSC are taken by representatives of the governments and thus, on an intergovernmental level. As a general rule, only states can be members of international organizations such as the United Nations. The WTO membership is an exception in this regard. Article 3 of the UN Charter explicitly declares that members of the United Nations shall be states. Regarding the UNSC, Article 23 (1) of the Charter states that it “shall consist of fifteen Members of the United Nations”, each of which should have one representative (Art. 23 (3)). Generally, decisions in the UNSC, other than on procedural matters, shall be taken “by an affirmative vote of nine members including the concurring votes of the permanent members” (Art. 27 (3)). The permanent members of the UNSC are the People’s Republic of China, Russia, the UK, France and the U.S.A. During the adoption of the UNSCR 1973 on 17 March 2011, Germany was one of the non-permanent members of the Security Council. In compliance with the institutional framework of the UN; the adoption of UNSCR 1970 and 1973 (2011) were taken on an intergovernmental level. Diplomatic representative of the member states of the UNSC at this time were negotiating about the resolutions and had the right to vote on the adoption. In this forum, *Moravcsik’s* principle of *Intergovernmentalism* is thus evidenced.

Regarding the EU, the most important decisions during the Libyan crisis were also taken on an intergovernmental level, since they mostly concerned the CFSP. According to the Treaty of the European Union,

the European Council, consisting “of the Heads of State or Government of the Member States together with its President and the President of the Commission” (Art. 15 (2) TEU) “shall identify the **strategic interests** and **objectives** of the Union”²²⁴ (Art. 22 (1) TEU). From this it follows that it is the Member States which decide upon the guidelines for the Union’s action and which can influence all supranational bodies, especially the Commission, which has the right to initiative in many policy fields. Decisions in the European Council are generally taken by consensus (Art. 15 (4) TEU). This can be explained by the fact that no nation state wants to give up sovereignty when it comes to the very important task of agenda setting for the European Union, especially in the sphere of high politics, such as security or defence policy.

The European Council elects its own president (Art. 15 (5) TEU), appoints the High Representative of the Union for Foreign Affairs and Security Policy (Art. 18 (1) TEU) and proposes the President of the Commission (Art. 17 (7) TEU). All these posts are representing the European Union externally and are important agenda-setters of the Union’s policies.

Another body of the EU with intergovernmental decision-makers is the Council of the European Union. It consists of “a representative of each Member State at ministerial level” (Art. 16 (2) TEU) guided by the national governments. The Council needs to approve legislation proposed by the Commission and can thus veto supranational initiatives. Furthermore, it plays the leading role in the CFSP. Other than in different policy fields, the Council shall take decisions concerning the CFSP unanimously (Art. 31 (1) TEU).

The Commission and the European Parliament, the main supranational institutions of the EU, are not involved in the decision-making procedure under CFSP. Moreover, no legislative acts can be taken in this policy field and the Court of Justice of the European Union (ECJ)

²²⁴ Highlighted by the author.

does not have jurisdiction with respect to the provisions concerning the CFSP (Art. 24 (1) TEU). It is disputable whether this provision does comply with Art. 2 (TEU), which states that “the Union is founded on the value of [...] the rule of law”. Generally, all actions by the European Union should be in line with the Union’s principles. The institutions are subject to review of the conformity of their acts with the Treaties and the general principle of the rule of law. However, in the CFSP there is no judicial review by the ECJ, nor any control mechanism by the Commission or the European Parliament. Under Article 10 (3) TEU, decisions in the EU “shall be taken as openly and as closely as possible to the citizens”. Nevertheless, decisions in the CFSP are often taken behind closed doors and cannot be approved by the representatives of the citizens in the European Parliament. Therefore, one could speak of a “democratic deficit” in this policy area.

Since the Libyan crisis was concerning the security of the EU, the Union had to react to the situation within the framework of CFSP. Thus, the governments of the Member States had the right to initiate decisions and regulations which would answer to the uprisings in the Southern Neighbourhood in the Council and the European Council. It was the Council which decided upon restrictive measures against the Gaddafi regime in line with Art. 215 TFEU and Chapter 2 of Title 4 TEU. According to the documents shown in Chapter 4 of this thesis, the Council often adopted these measures on its own or after a recommendation of the European Council, where the Heads of State and Government had come together trying to find a common position. The Commission and the High Representative also made official statements referring to the situation in Libya. However, it is not evident that the Council did follow a joint proposal of the Commission and the High Representative in adopting the respective sanctions and thus followed the procedure stated under Art. 215 (1) TFEU. The European Parliament did not have any saying in the decision-making processes

during the Libyan crisis regarding the aforementioned CFSP measures. *Moravcsik's* assumption that Intergovernmentalism is an important factor of the decision-making process in the EU thus proves true in the sphere of CFSP during the Libyan crisis in 2011.

4.2.2 *Lowest-common-denominator bargaining*

According to Liberal Intergovernmentalism, political decision-making on the international level is shaped by the lowest-common-denominator bargaining. *Moravcsik* argues that usually the most powerful states lead international negotiations and conciliate less powerful states with 'side-payments'. When applying this theory to the negotiations on the European level, *Moravcsik* sees France, Germany and the UK as the leading 'big three'. From this he concludes, that decisions in the EU are usually taken on a level of the lowest common denominator of the different state preferences of the 'big three'.

However, according to the Liberal Intergovernmentalist, it is possible that one of the three most powerful states agrees upon a policy which is against its own interests. This can be the case if the state fears to be excluded by the two other states and hence worries about having a future disadvantage. Thus, the pure possibility that other states might have a comparative advantage can be an incentive to cooperate.

In the following, the second factor of interstate negotiations, the lowest-common-denominator bargaining, will be applied to explain the common position of the EU during the Libyan crisis.

France and the UK proposed to enforce a no-fly zone over Libya on 11 May 2011 in the European Council. Many of the other Member States, especially Germany, were against a military intervention. This is the reason why the European Council could not agree upon a common military operation under the CSDP framework in the first rounds of negotiation. After a time of bargaining, the Member States could agree upon the condemnation of Muammar al Gaddafi as well as on

restrictive measures against him and his regime. This was the lowest common denominator between all Member States, especially between the big three France, the UK and Germany. There was no real convergence of national policy preferences in the Libyan case.

In the following meetings of the Council of the European Union, the foreign ministers of the Member States adopted these sanctions and strengthened them more and more with the following decisions.

After France and the UK had started a military intervention in Libya outside the CSDP framework but inside of an international coalition of the willing, Germany threatened to be excluded. The arising critic from the two strong European powers, France and the UK, as well as on behalf of the U.S:A. made Germany think of a proposal to be back in the game and to meet again international approval. This is when the idea of a common operation under the CDSP framework finally came up.

Germany, having abstained on the UN Resolution 1973 which authorised the use of force against the Libyan regime on 17 March, now announced a strong participation in the CSDP Operation *EUFOR Libya*. After the public criticism of its abstention in the UNSC, Germany could now demonstrate solidarity, responsibility and engagement for the Libyan people. Since *EUFOR Libya* was planned as a humanitarian assistance operation and not a combat operation, the German government assumed to quickly overcome domestic opposition.²²⁵

Even though already involved in the enforcement of a no-fly zone in Libya, France and the UK were also in favour of establishing a common operation under the CSDP framework. France has always pushed a European defence and security policy, since it has wanted to disassociate the Member States of the EU from NATO. Also UK, which is often characterised as EU-critical and NATO-friendly, has

²²⁵ See: Göler/Jopp, Gemeinsame Sicherheits- und Verteidigungspolitik, in: Weidenfeld/Wessels (eds.): Jahrbuch der Europäischen Integration 2011, Baden-Baden 2012, p. 275.

agreed upon the operation. Both NATO members were the initiators of the common defence and security policy and tried to push their idea in the late 1990s. At the British-French summit in Saint-Malo in 1998, France and UK asked for a common European defence policy under the CFSP framework in order for the EU to play a more important role on the international stage.²²⁶ Both having a permanent seat in the UN Security Council and being nuclear powers, France and UK probably have acted on the assumption that they would be the leading powers in the EU on CFSP matters and would give the direction for common operations. However, in the 2000s, U.K. and France faced complications in the CFSP recognizing that it would be difficult to find consensus among all Member States. This explains why both countries started to conduct bilateral missions, such as the intervention in Libya. However, they did not exclude further operations or missions under the EU framework.

Being a strong ally of the United States did not mean for the UK not to favour a strong European defence policy, especially since U.S. President Barack Obama explicitly asked the EU to show more commitment and action in their Neighbourhood.²²⁷ The Obama administration was facing budgetary risks and capacity constraints due to their military involvement in Afghanistan and Irak and their domestic situation. This explains why the U.S. was not willing to play the role of the super power combating crisis around the globe any longer.²²⁸

The establishment of a common operation under the CSDP framework during the Libyan crisis provided the opportunity for both, France and

²²⁶See: Joint Declaration issued at the British-French Summit, Saint-Malo, France, available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/French-British%20Summit%20Declaration,%20Saint-Malo,%201998%20-%20EN.pdf> (23 May 2014).

²²⁷ See: *Von Marschall*, „Barack Obama fordert mehr deutsches Engagement in Libyen“, *Tagesspiegel*, 5 June 2011, available at: <http://www.tagesspiegel.de/politik/us-praesident-exklusiv-barack-obama-fordert-mehr-deutsches-engagement-in-libyen/4253466.html> (27 May 2014).

²²⁸ See: *Göler/Jopp*, *Gemeinsame Sicherheits- und Verteidigungspolitik*, p. 271.

the UK, to show their conscientiousness towards their international allies as well as to their European partners and thus to improve their overall image.

The final agreement on the CSDP operation in Libya on 1 April 2011 could be seen as the attempt to save the public opinion about the EU and its common foreign policy after the public disagreement in the UNSC. Keeping in mind the four principles on humanitarian assistance and OCHA's commonly known scepticism against military support, the probability that OCHA might have asked for the military support of the EU was rather low. From the beginning it was questionable why the Council put the mission *EUFOR Libya* in relationship with a humanitarian assistance mission.

In its decision establishing *EUFOR Libya*, the Council specifically refers to UNSCR 1973 which authorizes states "to take all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya"²²⁹. However, according to the Council, the EU mission should only "contribute to the safe movement and evacuation of displaced persons"²³⁰ and "support, with specific capabilities, the humanitarian agencies in their activities"²³¹. There is no reference to the enforcement of the arms embargo and the no-fly zone, nor any indication to concretely protect civilians in Libya, which was explicitly requested by the respective UNSC Resolution. Regarding this fact the EU proposal was a rather weak response to UNSCR 1973.

However, only proposing such a mission would help the EU to get out of the international mockery due to their incoherence at the beginning of the crisis. With an EU mission under the CSDP framework, the EU wanted to show their ability to act in concert in foreign and security matters. This unanimity was behind time: the international community had already reacted to the Libyan crisis with different measures.

²²⁹ UNSCR S/RES/1973 (2011), 17 March 2011.

²³⁰ Council Decision 2011/210/CFSP (OJ L 89/17, 5.4.2011).

²³¹ Ibid.

NATO had just taken over a multilateral military action aligned with the fulfilment of UNSC Resolutions 1970 and 1973.

The EU Member States were never in favour of launching a common military mission. They just adopted a common decision in order not to lose their face on the international security scenery.²³² For this purpose, the EU needed a higher common denominator. In order to achieve this goal, some states, especially Germany, had to give up some of their domestic preferences. In the Libyan case, Germany was willing to do so regarding its declining reputation on the international scene. However, putting the condition of a requirement of the OCHA officials to launch *EUFOR Libya* shows that the common denominator was only lifted by a small step, since it proves that the EU wanted to create as many obstacles as possible to start a military operation in Libya.

The operation *EUFOR Libya* should show the international community that the EU is able to have a coherent strategy and should rescue Germany from the omnipresent reproof of isolation and weakness. All Member States agreed upon this mission, because they commonly tried to improve the image of the EU CFSP in the eyes of the international community. France and the UK could demonstrate that they are not only doing their own business but also care about their European partners. Germany, on the other hand, could prove that it is cooperative and ready to help implementing UNSCR 1973. The cooperative game in the European Union took place.

The bargaining during the Libyan crisis shows how difficult it was for the Member States of the EU to find a solution which would meet all 27 different state preferences at hand. Even though state preferences of some of the members could probably be fulfilled with side-payments and linkages, the state preferences of the “big three” drifted too much apart in order to find a common position. The lowest common denominator between France, Germany and the U.K. was the

²³² See: *Menon*, European Defence Policy from Lisbon to Libya, in: *Survival*, vol. 53, no. 3, June-July 2011, pp. 75-90, p. 75.

decision to adopt sanctions against the Gaddafi regime. Compared to the possible crisis management tools explicitly stated in UNSCR 1973, the EU reaction was a rather weak one. This explains the international critic of the EU incoherent position during the Libyan crisis. Ironically, the EU did act commonly and in a coherent way under the CFSP framework when it adopted the respective sanctions against the Libyan regime. However, the public perception was very much influenced by the behaviour of the EU Member States outside of the European Union, e. g. France's unilateral approach towards the Libyan opposition and its proposal to enforce a no-fly zone as well as Germany's abstention in the UNSC. The problem is that the EU Member States cannot claim to react commonly under the Union framework when they act individually on the international scene. Referring to *Moravcsik's* first stage of political decision-making, states are always shaped by the domestic interests and preferences. Hence, it is difficult for the governments of the Member States to find a balance between their obligations towards their European colleagues and international allies and their obligations towards their citizens and domestic interest groups. The reaction of the Member States during the Libyan crisis, especially the reaction of France and Germany, demonstrate that governments are more willing to achieve the state preferences and impress its domestic cliental, than to stick to their obligations within the EU or international alliances such as NATO. In summary, *Moravcsik's* second principle of interstate negotiations, the lowest common denominator bargaining, thus applies to the case at hand.

4.2.3 *Strict limits on future transfers of sovereignty*

The protection of state sovereignty is seen as a constant by Liberal Intergovernmentalism and as the third core principle of interstate negotiations. According to *Moravcsik*, governments try to keep their

sovereignty while giving up the least of competences to a supranational level.

When establishing the European Union, the Member States agreed upon conferring competences to the Union “to attain the objectives they have in common” (Art. 1 TEU). The nation states precisely put down the limits of the Union’s competences:

“Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.” (Art. 5 (2) TEU)

“In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States” (Art 4 (1) TEU)

The Member States constitute in two articles that the Union is only allowed to act within the scope of competences which were conferred upon it. The nation states wanted to prevent at all costs their loss of sovereignty.

Nevertheless, during the history of European integration, more and more competences have been conferred upon the Union. The European Union nowadays has a lot of exclusive competences, especially regarding the customs union and the Common commercial policy (Art. 3 TFEU). Furthermore, the Union has many shared competences with the Member States in different policy fields (Art. 4 TFEU). Yet the area of CFSP and CDSP, which is “subject to specific rules and procedures” (Art. 24 (1) TEU) is not one of the Union’s competences. The nation states, which were the drafters of the Treaty of the European Union, wanted to ensure their sovereignty in this delicate policy field. That is the reason why the institutional framework of the EU limits the competences of the supranational bodies regarding CFSP.

Even though the Lisbon Treaty established some institutional changes which favour the supranational bodies of the Union in CFSP matters, the main decision-making competences stay with the national gov-

ernments.²³³ The reform of the post of a High Representative of the Union for Foreign Affairs and Security Policy in the Lisbon Treaty combines the former post of the High Representative, which has been established by the Amsterdam Treaty, with that of a Vice-president of the European Commission.

This ‘double-hatted’ High Representative shall coordinate the EU’s CFSP to make the EU foreign policy more consistent and coherent.²³⁴ The new position should officially give the Commission more influence in foreign and security matters. However, the High Representative is very much influenced by and dependent on the European Council and the Council. It is the Council which has the sole competence to adopt decisions in the CFSP. Article 18 (2) TEU explicitly states that the High Representative “shall contribute by his proposals to the development of that policy [CFSP], which he shall carry out **as mandated by the Council**²³⁵. The same shall apply to the Common Security and Defence Policy”. Thus, the High Representative has to follow the instruction of the intergovernmental body in his conduction of the EU’s foreign policy.

The High Representative shall contribute to the preparation of the CFSP and ensure implementation of the decisions taken by the Council (Art. 27 (1) TEU). With the creation of the new post, the Member States reacted to the lack of cohesion in the CFSP before the Lisbon Treaty. The High Representative shall represent the EU in foreign and security matters and enable the Union to speak with one voice on the international scenery (Art. 27 (2) TEU). From the liberal intergovernmentalist perspective, this post was created by the governments in order to facilitate their work in the CFSP. The decision was more a question of efficiency than a transfer of sovereignty to the Union. Once handing over competences to the supranational bodies,

²³³ See: *Menon*, European Defence Policy from Lisbon to Libya, p. 76.

²³⁴ *European Union External Action*, The High Representative of the Union for Foreign Affairs and Security Policy, available at: http://www.eeas.europa.eu/ashton/index_en.htm (29 May 2014).

²³⁵ Highlighted by the author.

the Member States more or less accept the development of the policy on the Union level. However, if they do not agree, the nation states can still veto a decision in the Council. Moreover, there is the possibility to agree upon another political direction in the European Council.

Moravcsik argues that the nation states are willing to sacrifice some national autonomy in exchange for certain advantages. With the creation of the High Representative the nation states could answer to the international and domestic critique of the Union's CFSP. The governments saw the necessity of creating a contact person of the EU which would increase the reputation of the CFSP project and give them a better position in international affairs.

On 1 January 2011, the European External Action Service (EEAS) was launched in order to assist the High Representative in his work (Art. 27 (3) TEU). The establishment of the EEAS followed a proposal of the High Representative in which he referred to Article 27 (3) TEU and the need for more efficient and coherent foreign policy structure.²³⁶

According to Article 27 (3) TEU, the diplomatic corps of the EU shall cooperate with the national diplomatic services of the Member States and shall comprise of officials from the Council, the Commission and the national diplomatic services. The EEAS has been created with the same purpose as the establishment of the post of the High Representative: It shall help the CFSP of the Union to be more coherent and consistent. From the beginning it was clear that the High Representative could not implement the CFSP mandated by the Council by his own. That is the reason why the Lisbon Treaty has already mentioned the need for an External Action Service and the procedure in which it should be created. Since two third of the representatives in the diplomatic service are delegated by the Member States, the nation states did not give up their sovereignty in the newly

²³⁶ See: Council of the European Union, 8029/10, 31 March 2010.

established body. Actually, the nation states now even have more power in the diplomatic corps, since the delegations of the European Union were directed by the Commission only before the creation of the EEAS.

Regarding the institutional structure of the EU in foreign and security policy matters, it becomes clear that the nation states are only willing to give up sovereignty if the loss of influence would provide them with more advantages and benefits. The Member States of the EU strictly define the competences of the supranational bodies in the Treaties in order to assure their full control over the Union's actions. The integration of the European Commission in foreign affairs can be explained with the aim to create more efficiency and coherence in the foreign action of the EU. With these institutional changes the Member States wanted to react to the international critique of the CFSP in the years before the Lisbon Treaty.

The institutional framework of the EU shows that the nation states want to strictly limit the competences of the supranational bodies of the Union. Furthermore, they are not eager to share their autonomy with the other Member States. That is the reason why the most important decisions of the Council on CFSP matters are still taken by consensus and not by qualified majority voting. The decisions in the European Council are always to be taken unanimously.

Summarizing all the points which were just illustrated, *Moravcsik's* hypothesis that the nation states try to strictly limit the transfer of sovereignty is proven right. The Member States of the EU are only willing to give up a bit of autonomy if a beneficial outcome is guaranteed and if it helps the governments to achieve the domestic objectives.

The involvement of supranational elements in the CFSP can be understood as a reaction to the inconsistent and incoherent policy making on the intergovernmental level. However, the reaction of the EU to the Libyan crisis demonstrates that neither the High

Representative nor the EEAS were able to push a more coherent approach towards the Gaddafi regime. It was the Member States which took the sole decisions on restrictive measures against the regime in the Council and the European Council.

Nothing in the Lisbon Treaty encourages the Member States to be more cooperative and to step back from their national interests. The main problem of the CFSP is the lack of coherence between the different state preferences. *Menon* argues that the institutional changes towards more supranationality in the Lisbon Treaty which should create more coherence in the CFSP and CSDP are counterproductive, since they shift attention from the national sources of the incoherence to the European level.²³⁷ This would enable the nation states to blame the supranational institutions for their own failure to act.²³⁸

5. Conclusion

The EU's response to the Libyan crisis in the beginning of 2011 has been perceived as very incoherent and weak by the international community.²³⁹ However, a more detailed analyse of the decisions taken by the Council during this time has revealed that the EU rapidly reacted to the crisis in form of sanctions such as asset freeze or arms embargo against the Gaddafi regime.

Taking this outcome into account, one might wonder why the international community got the impression of an incoherent EU performance during the crisis. In order to explain this phenomenon one has to take into consideration that the EU cannot be classified outside the international system. The EU foreign policy highly depends on the United Nations as well as on the North Atlantic Treaty Organisation. Considering the surprisingly strong mandate from the

²³⁷ See: *Menon*, European Defence Policy from Lisbon to Libya, p. 76f.

²³⁸ *Ibid.*

²³⁹ See: *Göler/Jopp*, Gemeinsame Sicherheits- und Verteidigungspolitik, p. 274.

UNSC to protect civilians in Libya and the NATO Operation *Unified Protector* establishing a no-fly zone over the Libyan territory, the EU restrictive measures on the Gaddafi regime appear as a rather low compromise.

It has been demonstrated that the Member States of the EU, especially France and Germany, had completely different approaches towards the Gaddafi regime and the security situation in Libya. France was one of the first states to ask for a military intervention whereas Germany worried about the risks of such an operation. The disagreement between the EU Member States was publically demonstrated in the different voting behaviour during the adoption of UNSC Resolution 1973 (2011). While France and the U.K. voted in favour of the resolution, Germany abstained from its vote and thereby provoked its partners. Furthermore, the discrepancy between the European partners has been revealed through France's unilateral approach towards the Libyan opposition forces only one day before a meeting of the European Council.

The incoherence of the Member States demonstrated during the Libyan crisis illustrates the problem of a successful common foreign and security policy under the EU framework. The CFSP has been subject to a lot of critique in the years before the Arab Spring. The new provisions on CFSP and CSDP in the Lisbon Treaty were established to fight these problems and create more coherence and consistency in the foreign policy of the EU. However, the Libyan crisis showed that these changes did not lead to a more successful common policy.

The main actors in CFSP matters remain the Member States. They are trying to use the CFSP framework in order to achieve their own national preferences, which would not be achievable through unilateral means. As long as these different national preferences do not converge, the outcomes of EU negotiations concerning the CFSP and CSDP will be marked by the lowest common denominator.

The theory of Liberal Intergovernmentalism by *Andrew Moravcsik* explains how difficult it is to take decisions on an intergovernmental level. The liberal intergovernmentalist analysis of the decision-making process in the EU during the Libyan crisis revealed the challenge of a deeper European integration in the field of CFSP. As shown by the configuration of the state preferences of France and Germany in the case study, the Member States of the EU are shaped by different domestic factors and strategic cultures, which influence their position in negotiations on the European level. The EU Member States have not yet developed a common strategic culture, which would help them overcome the lack of coherence.²⁴⁰

Seeing itself as an important global player, France has tried to push military cooperation in the EU since the establishment of a CFSP under the Maastricht Treaty. In the Libyan crisis, the interventionist strategic culture of the country has been illustrated. The French population was in favour of a military intervention in Libya and called for a strong approach of the French government towards the uprisings in the Southern neighbourhood. French President Nicolas Sarkozy, who had the right to take decisions in matters of foreign and security policy solely under the French Constitution, made use of the support of the population in order to assert his position on the domestic and international scene. With regard to the upcoming presidential elections and his all time low approval rates, Sarkozy needed more recognition from the French voters.

In the case of France, national preferences and the preferences of the government went hand in hand. It is thus difficult to examine whether Sarkozy's strategy was more influenced by the domestic interest groups or by his own wish for approval on the international arena. However, it became clear how influential the domestic calls for a strong approach towards the Libyan regime were on the French government and that it did not only act because of a given structure of the

²⁴⁰ *Staak/Krause*, Europa als sicherheitspolitischer Akteur, p. 7.

international system. In order to be re-elected, the French president tried everything to convince the French citizens of his strengths in international affairs.

In the German case, the influence of domestic preferences on the decision-making of the German government was more obvious. Having developed a pacifistic strategic culture after World War II, Germany was not prepared to take the lead in foreign and security matters, especially when it came to military interventions. The German government under Chancellor Angela Merkel had to face a difficult decision during the Libyan crisis. On the one hand, it wanted to serve national preferences: Polls showed that the majority of the German population was against a military involvement in Libya. On the other hand, its EU partners and NATO allies called for a military intervention enforcing a no-fly zone over Libya. Being a non-permanent member of the UNSC at this time, Germany could present itself as an important global player and a serious candidate for a permanent seat in the Security Council. At the end of the configuration of state preferences, the German government decided to vote in favour of national preferences and not of its transatlantic and European partners. This example confirms the assumption of Liberal Intergovernmentalism that domestic societal actors influence the behaviour of governments in interstate negotiations.

In the second part of the analysis the interstate negotiations during the Libyan crisis have been examined. First, the principle of *intergovernmentalism* was applied to the decision-making procedures on the European and international level concerning foreign and security matters. The analysis showed that all decisions concerning the Libyan situation were taken on an intergovernmental level. The adoption of the UNSC Resolutions and the decisions in the Council of the European Union were taken by representatives of the involved governments. It has been illustrated that the EU's CFSP is subject to specific rules and procedures which exclude the supranational

institutions from the decision-making procedure. Even though some steps towards a deeper integration in the field of CFSP have been taken in the Lisbon Treaty, the legislative competence remains with the Member States. The first principle of interstate negotiations according to LI was thus proven right.

In the next step the second principle of interstate negotiations, the *lowest-common-denominator-bargaining*, has been applied to the negotiations during the Libyan crisis. As arises from the respective Council Decisions at the beginning of negotiations, the Member States could only agree on restrictive measures against the Gaddafi regime and its supporters, but not on a common military operation as proposed by France and U.K. The state preferences of the ‘big three’, France, Germany and U.K., were too divergent in order to show a strong common approach towards the Libyan crisis. The agreement on sanctions against the regime can be seen as the lowest-common-denominator of the Member States’ preferences. Only after Germany had felt excluded from the other two big players, France and U.K., it decided to vote in favour of a military operation under the CDSP framework. However, this operation (*EUFOR Libya*) was connected to a lot of requirements which were, in the end, not fulfilled. This diversion can be understood as a reaction to the negative critique of international politicians and journalists concerning the adopted CFSP measures. Trying to save face on the international scene, Germany lowered its state preferences in order to create a higher common denominator with its European partners.

The Libyan crisis has clearly illustrated how negotiations on the European level concerning CFSP and CDSP matters are shaped by the lowest-common-denominator-bargaining. The lowest common denominator was the adoption of restrictive measures and the proposal of a military intervention whose intention and necessity remain doubtful. The national preferences of the Member States were too divergent in order for them to create a strong common strategy.

Finally, the third principle of interstate negotiations, the *strict limit on future transfers of sovereignty*, has been analysed. The legal framework of the European Union explicitly limits the competences of the supranational institutions, namely the Commission, the Parliament and the ECJ. When drafting the TEU and TFEU, the Member States were very accurate in stating which competences remain with the nation states. In the CFSP and CSDP the supranational bodies are excluded from the decision-making procedure as well as from the legal review. The changes in the Lisbon Treaty towards a deeper integration in the field of CFSP and CSDP can be explained by the need for more efficiency and coherence in this policy area. While the external action by the Union such as external trade and the Common commercial policy is very effective and appreciated, the CFSP has suffered a lot of inconsistency, incoherence and inefficiency in the years prior to the Lisbon Treaty. The expanded competences of the High Representative and the establishment of the EEAS should allow the EU to speak with one voice on the international scene and lead to more approval of the CFSP in public opinion. The changes in the Lisbon Treaty show that nation states are willing to give up some sovereignty if they can expect more benefits than disadvantages from such a transfer. Hence, they do not give up autonomy due to a cooperative feeling but rather to pursue their own national interests.

As demonstrated by the case study, more institutional integration does not necessarily lead to more convergence in state preferences. Even after the changes to the CFSP framework in the Lisbon Treaty, this policy field still remained in the hands of the nation states. It is thus questionable if further development of the institutional structure of the EU will result in more coherent approaches towards upcoming crises. As long as the national preferences of the Member States can be achieved on a national level, the nation states will not be bound to deepen their cooperation in the field of foreign and security policy. The Member States of the EU are only willing to cooperate if their

national interests converge with the national interests of the other states. The nation states need to have a similar perception of the present situation as well as a shared vision of a common future. Given the different strategic cultures of the Member States which have been developed through a long period of time it will be difficult to define the same state preferences and to raise the common denominator in the foreseeable future.

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