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Decision Making in Times of Crisis

Germany's decision to abstain from Security Council Resolution 1973

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Decision Making in Times of Crisis

Germany's decision to abstain from Security Council Resolution 1973

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Index of abbreviations:

AL – Arab League

AU – African Union

EU – European Union

GA – General Assembly of the United Nations

GCC – Gulf Cooperation Council

IS – Islamic State

OIC – Organisation of Islamic States

NATO – North Atlantic Treaty Organization

NGO – Non Governmental Organization

NTC – National Transition Council (Oppositional Libyan Group)

NFZ – No-fly zone

R2P – Responsibility to Protect

UN – United Nations

UN SC – United Nations Security Council

Decision-Making in Times of Crisis. Germany's Decision to Abstain from Security Council Resolution 1973

Part I: Case Study

1. Crisis and decision making in the field of foreign politics

“It was a small group that came together on Wednesday after the cabinet had closed its session. The Chancellor was present as well as the minister of Foreign Affairs, the Minister of Defence and the Minister for Finance and Economics. Five individuals decided within a few minutes to make the most important shift in German foreign politics for a long time: For the first time the Federal Republic is willing to export weapons to a crisis ridden area – North Iraq. In a region where fighting is acute.”¹

In August 2014, the international community saw itself confronted with the imminent danger of genocide, committed against the religious group of the Yezides who reside in the north of Iraq.² Facing the rapid advance and brutality of the terror group calling itself “Islamic State” (IS) that rampaged in parts of Syria and Iraq, the international community had to ask itself how this brutality and violence could be stopped. The international community had assumed that the advance of the IS could be curbed by regional forces, but IS gained ground more rapidly than expected and proved this assumption wrong. Pressure to act quickly continued to rise, worsened by the imminent danger thousands of Yezides were facing who had fled their homes into the Sindshar Mountains. But the Yezides were still surrounded by IS and soon their basic humanitarian supplies came to an end. Confronted with the double thread of a looming humanitarian catastrophe and potential massacre, the German government decided to ship weapons to Kurdish groups in the region – fuelled by the hope that would be more effective than the Iraqi army in fighting IS. This was a difficult decision for the German government since it clashed with a long standing doctrine in German foreign policy: the ban to sell weapons to crisis ridden areas. The position of the German government shifted from rejection to support of this idea in the course of a few days within a small circle of decision makers in the Chancellery, the Ministry of Foreign Affairs, the Ministry of Defence and the political parties. Government spokesperson, Steffen Seibert, was confronted at the federal press conference with the question on how to explain such a swift change in the fundamental positions of Germany, he argued: “Foreign policy needs sound principles, as well as the ability to react to current developments. Germany follows such principles regarding the export of arms. I pointed out their validity on Monday. Principles always leave some scope for judgement. We are ready, regarding the dramatic situation in North Iraq, to fully exploit this scope of judgement”.³ Seibert describes the “dramatic situation” as follows: “We are witnessing the advance of individuals to whom nothing is sacred even though they always refer to religion. Individuals that spare neither women nor children and who, in their fight against those with a different faith and with different beliefs, show merciless cruelty. This concerns all of us. To stop this advance, to aid those in need, those who suffer, those who are traumatized is a task for the international community as a whole. Each and every one can and should help according to their capabilities”.⁴ Without using the terminology, Seibert makes a point regarding a cross-border responsibility of the international community to intervene when facing massacres or large scale loss of lives (Responsibility to Protect) – a concept, that became more and more prominent during the last years.⁵

The decision of the United Nations Security Council, dating March 2011, to establish a no-fly zone in Libya as well as further sanctions against the Gaddafi regime, is seen as one of the first manifestations of the concept.⁶ The situation was partly similar to the recent crisis in Iraq and Syria: within a short time frame, Germany – by that time a non-permanent member of the Security Council – had to make a decision facing the imminent danger of a massacre committed against opposition groups in the city of Benghazi. This situation was also “dramatic” and involved “sound principles” that stood against each other in various coalitions. Germany decided to abstain from the final vote on Resolution 1973, nonetheless it reached the required majority of votes and led to the prevention of the imminent danger in Benghazi.

Since Resolution 1973 was passed, there has been a number of publications regarding the justification as well as the evaluation of the German vote (e.g. Fröhlich 2011; Rinke 2011; Müller 2011; Merkel 2011; Brockmeier 2012; Lindström/Zetterlund 2012; Seibel 2013).⁷ Wolfgang Seibel concludes that Germany’s decision to abstain from the vote stemmed from a “contradictory attitude within the German government” that is “long-term in nature and was and is supported by consensus within the German political class”. Further, he adds: “Those contradictions, rooted in a lack of professionalism in the way of governing, were highlighted by a worsening international crisis”.⁸ This study focuses less on the normative and political judgement of the German position⁹ but rather on the illustration of a decision making process in times of crisis. Consequently the resolution on Libya is not portrayed as a crisis of German foreign policy but as an example of foreign policy decision making in times of crisis. A crisis marks a “turning point” in diplomatic, economic or military means.¹⁰ Characteristic features of a crisis situation are that the situation poses a threat to the common values of the actors involved, it implies acting under conditions of high and even increasing insecurity as well as a feeling of urgency, resulting from the rapidly changing environment. For the actors involved, this means being confronted with unforeseen events, high pressure and limited scope for decision making. Decision-makers usually have an increased latitude and responsibility for individual decisions since time pressure does not allow to collect a broad range of opinions or systematically calculate all options. In such a situation decision-makers strive for a stabilization of the volatile situation and tend to follow their personal experiences and convictions.¹¹ Structural adjustments in the organization can ameliorate but not eliminate the highly personal responsibility in crisis situations.¹²

During the decision making process regarding Resolution 1973, Chancellor Angela Merkel, Foreign Minister Guido Westerwelle in collaboration with his staff in Berlin and New York, as well as Minister of Defence Thomas De Maizière were facing rapid developments. The Minister of Foreign Affairs holds a prominent position within this decision making process since he was most prominently involved through continuous participation in multilateral meetings. Additionally, UN-politics were viewed (in contrast to EU politics) as a field that is driven by the Foreign Ministry. This is also partly due to the fact that the Ministry of Foreign Affairs works as the operational representation of Germany in New York at the United Nations through its Permanent Mission. Further, Minister of Defence, Lothar De Maizière, was just shortly in office since the former Minister of Defence, Karl-Theodor zu Guttenberg, was forced to resign.¹³ His resignation which was preceded by a lengthy domestic debate had absorbed a lot of attention by the government. Additionally, Chancellor Merkel was further involved in Germany’s initial reaction towards the reactor catastrophe in Fukushima and upcoming elections in Baden-Württemberg and Rheinland-Palatinate on March 27th. This study will show that the final deci-

sion on Germany's vote in the Security Council was a decision which was taken together and supported by the three ministers.¹⁴ Since the study will shed light on decision makers and specific dynamics within circles of decision makers it is of importance to point out the individuals concerned with the developments of the Arab Spring. Since the Arab Spring demanded a lot of attention from foreign policy experts, a daily meeting was initiated at the Foreign Ministry to keep track of developments. Part of the meeting were experts as the political director Emily Haber, the expert for the Near East Andreas Michaelis, the head of the department for the United Nations Michael Freiherr von Ungern-Sternberg, the head of the office of the Foreign Minister Thomas Bagger, the spokesperson of the Foreign Ministry Andreas Peschke, and Germany's Permanent Representative to the United Nations, Peter Wittig, who was included in the meetings via video call from New York.¹⁵

2. Libya

A study facing the developments in Libya in early 2011 needs to consider developments in the broad context of the Arab Spring.¹⁶ The Arab Spring found its beginning with the uprisings in Tunisia which ultimately led to the resignation of President Ben Ali on the 14th of January 2011. Inspired by its success, other civil societies followed the Tunisian example, and uprisings spread among the states of Northern Africa. Civil society movements succeeded in Egypt, where the reign of Muhamar Husni Mubarak came to an end as well. Inspired by the rapid movement and success within the neighbouring countries, civil society in Libya – where Gaddafi was in power since he overthrew the government in 1969 - started to express its dissatisfaction with the Libyan government.¹⁷ In contrast to other developments during the Arab Spring, demonstrations quickly turned violent and resulted in first casualties. Alarmed by those developments, Catherine Ashton, the High Representative of the European Union for Foreign Affairs and Security Policy called on the Libyan government to: "exercise restraint and calm and to immediately refrain from further use of violence against peaceful demonstrators".¹⁸ The following day, the Deputy Permanent Representative of Libya to the United Nations – Ibrahim Al-Dabashi – strongly condemned the situation in Libya and Gaddafi's action. He resigned as representative of the Libyan government and called on the Security Council to convene a meeting on Libya. Furthermore, Al-Dabashi urged the Security Council to establish a no-fly-zone over Libya to prevent the regime from further attacking its population. Al-Dabashi, together with most members of the Permanent Mission of Libya, urged the Security Council to act quickly, since they expected a massacre to unfold in Tripoli.¹⁹ The UN Secretary-General, Ban Ki-moon, addressed the situation in a phone-call to Gaddafi, in which he expressed his outrage and pressed Gaddafi to stop the violence immediately.²⁰ Amidst ongoing violence, the High Commissioner for Human Rights, Navi Pillay, also expressed her concern regarding the situation in Libya February 22th: "The state has an obligation to protect the rights to life, liberty and security," she stated. "Protection of civilians should always be the paramount consideration in maintaining order and the rule of law. The authorities should immediately cease such illegal acts of violence against demonstrators. Widespread and systematic attacks against the civilian population may amount to crimes against humanity."²¹ Following Pillay's strong words, the Arab League also turned to the worsening situation in Libya, excluded the Libyan regime from its meetings and officially underscored its support for the Libyan opposition movement. On the same day, after being briefed on the situation in Libya, the United Nations Security Council issued a press statement in which it welcomed the Arab League statement, expressed its great concern regarding the situation in Libya and "called on the Government of Libya to meet its Responsibility to Protect its population".²² It

is notable that the Security Council's press statement labelled the situation in Libya as that would make the application of R2P suitable. On the following day, February 23rd, the Peace and Security Council of the African Union met to discuss the matter. The council condemned the violence in Libya, urged the Libyan government to stop the violence but also appealed to all parties to work together on a solution for the ongoing conflict.²³

February 25th, the United Nations Human Rights Council accepted without a vote resolution S/15-1, in which it strongly condemns the violation of human rights in Libya and also suggests the suspension of Libya's membership in the council through the GA.²⁴ Germany acted as supporter as well as co-sponsor of this resolution.²⁵ Furthermore, Germany strongly pushed within the EU for a condemnation of the Gaddafi-regime (whereas France and Italy preferred the option to call on all parties to stop the violence). On the same day, Foreign Minister Westerwelle expressed his unease about the EU's hesitation to do so and stated that Germany, together with France, has had a "crystal clear" stance on the matter and also welcomed the "clear" language that the AL and the African Union had used regarding the situation in Libya. He stressed that no one who willingly violates human rights deserves a seat in the Human Rights Council.²⁶ The suspension of Libya as a member of the Human Rights Council became effective on March 1st 2011.

This study focusses on the decision making process of the German government which makes it necessary to shed a light on the German position – mostly articulated through Foreign Minister Westerwelle and Germany's Permanent Representative to the UN, Peter Wittig. Westerwelle was a strong supporter of the Arab Spring and already called on February 11th on the Security Council to address issues of peace-building as early as possible – meanwhile, he underlined the fact that Germany was willing to step up to its responsibilities and to help the countries in transition in North Africa.²⁷ 15 days later, the option of a no-fly zone became vital when it was made public that US President Barack Obama was considering a no-fly-zone as one out of a number of possible options to tackle the situation in Libya.²⁸ The following day, the no-fly zone was mentioned once again as a possible way to address the worsening situation in Libya. Now also Westerwelle admitted that he would take this option into consideration.²⁹ February 28th, Westerwelle argued that he did not want to exclude a no-fly zone as an option, but now became more hesitant, when he added, that all options needed to be carefully considered. If the international community decided to act, it needed to be in a firm but appropriate manner.³⁰ In contrast to this, US Foreign Minister Hillary Clinton expressed her caution towards a no-fly zone on the very same day when she outlined that she doubted the effectiveness of a no-fly-zone since a great deal of the violence in the course of the Libyan civil war happened on the ground.³¹

3. Resolution 1970 as a starting point

Security Council Resolution 1970 was unanimously accepted by the Security Council. In the Resolution, it recalled "the Libyan authorities' responsibility to protect its population" and decided to refer the situation in Libya to the Prosecutor of the International Criminal Court. In addition, the SC agreed on a set of sanctions, to prevent the Libyan regime from further using violence against its population.³² Germany's Permanent Representative at the United Nations, Peter Wittig, once again underscored the importance of the Resolution: "The international community will not tolerate the gross and systematic violation of human rights by the Libyan regime. (...) This is a clear warning to those who perpetrate

systematic attacks against their civilian population that they will be held accountable. It should be clear to everyone that the Council will continue to follow the situation in Libya very closely”.³³ Other diplomats that followed the negotiations on Resolution 1970 closely, pointed out that Germany was very pushy in its support of the Resolution the sanctions against the Gaddafi-regime.³⁴

Meanwhile in Libya, the opposition gained ground within one week. On March 3rd, the German Embassy in Benghazi was shut down due to the ongoing fighting.³⁵ On March 5th, the National Transition Council formed and declared itself as the sole representative of the Libyan people which it underscored in a letter sent to the United Nations General Assembly.³⁶ Meanwhile, NATO Secretary General Rasmussen stated that NATO would not intervene in the country without Security Council mandate.³⁷ On the very same day, the Gulf Cooperation Council stepped in and argued that the Security Council should take all necessary means to protect the Libyan population – including a no-fly zone.³⁸ In a phone call on March 8th, President Barack Obama discussed and the British Premier David Cameron discussed ways to stop the violence in Libya. Obama and Cameron “agreed to press forward with planning, including at NATO, on the full spectrum of possible responses, including surveillance, humanitarian assistance, enforcement of the arms embargo, and a no-fly zone.”³⁹ On the same day, a representative of the NTC spoke in front of the European Parliament and demanded a no-fly zone over Libya as well as the official recognition of the Council. Meanwhile, the Organisation of the Islamic Conference joined the supporters of a no-fly zone, but underscored that its support of a no-fly zone clearly excluded fighting on the ground by foreign military. The OIC called on the Security Council to address the situation.⁴⁰ In the meantime, the Libyan government managed to block the previous advance of the Libyan rebels.

The study will now focus on March 9th to March 17th, when Resolution 1973 was passed. This time-frame was selected since it allows us to shed light on a very complex situation that called for quick decisions to be made, among a multitude of actors with shifting positions.

Resolution 1970 marked a threshold – it condemned the actions of the Libyan government and imposed sanctions on it to alter its behavior. Now it became crucial to the international community whether the Libyan government would follow the recommendations laid down in Resolution 1970 or whether different measures needed to be imposed. After the situation in Libya was moved to the International Criminal Court, a possible intervention under the reference to R2P was an option – given that Gaddafi would not give in and further violently oppress the opposition in Libya. Further it was important how regional organizations would react towards developments. How would the AL or AU position themselves in the case and what strategy would they prefer? Did a military intervention really become inevitable? Germany was a strong supporter of the sanctions-regime, pleaded for more sanctions on Libya and positioned itself skeptical towards a military intervention. Great Britain and France held a different position since both had argued from the beginning in favor of possible military sanctions and France proved to be very dominant in that regard. The United States were still skeptical towards military intervention since they feared its unpredictable costs. Questions also arose regarding the potential involvement with NATO and other regional organizations.

4. A development of eight days

The study will now progress using the following method: the focal point of the study is the German decision making process prior to the passing of Security Council Resolution 1973. The analysis therefore covers a wide range of newspaper articles and builds upon existing research that helped to shape the scope of this study. This material was analyzed using the method of “process tracing” and added key documents from international conferences and international organizations as well as autobiographies and studies of those involved.⁴¹

Wednesday, March 9th 2011

In Libya, the situation worsened. Gadhafi’s troops were further successful in defeating the opposition troops; some reported that the regime used fighter jets to attack the opposition. Gaddafi appeared on Turkish television and stated that his people would stand up and fight if a no-fly zone would be established.⁴²

NATO had expanded its airspace surveillance program to the terrain of the Mediterranean Basin. Further, the Alliance had begun with initial planning for a military intervention in Libya to present them to its Member States at the upcoming meeting of the Ministers of Defense.⁴³

On the US side, Obama’s national security team discussed the situation. They were informed by the Pentagon that the establishment of a no-fly zone would not be sufficient to turn the situation on the ground in favor of the opposition troops.⁴⁴

The German government discussed the situation as well. The arguments in favor for military intervention became more and more visible in the public, but the Chancellor and her team still voted for the strengthening of sanctions and an abstention from military intervention.⁴⁵ Germany now altered its course. Did diplomats consider it “pushy” on the verge of the talks regarding Resolution 1970, German officials now seemed more hesitant towards a more confrontative course against the Gaddafi regime.⁴⁶ During an interview on March 9th, Westerwelle underlined, that “a dictator who wages war against its own people” needs to go. Meanwhile he stressed that Germany must not enter a slippery slope, since it did not want to become part in a civil war: “Everything that surpasses sanctions needs a UN mandate as well as the participation of the Arab League”.⁴⁷ In an interview with the German newspaper *Straubinger Tagblatt*, Westerwelle once again underlined this position and insisted that: “Gaddafi wages war against his own people [...]. Therefore, there is just one position for the international community to take: The dictator has to leave. We pay our share by imposing targeted sanctions, by freezing monetary values and imposing travel bans [...]. On top of that, we have to decide on further sanctions to stop money from reaching Libya where the dictator and his family will likely use it to wage war against the population”.⁴⁸ Confronted with the option of a no-fly zone, Westerwelle argued: “This is an option which we have to consider very carefully – I already mentioned that in the past. But calling for a no-fly zone is relatively easy; imposing such a no-fly zone is much more difficult. Libya for example, has an air-defense system which needs to be neutralized first. Therefore, every option needs to be weighed very carefully. It is inevitable that there is a UN mandate for everything which goes beyond sanctions. In addition to that, everything should be decided in accordance with the Arab League, with

the other Arabic countries. We have to prevent to enter a slippery slope, where we would end up taking part in a military conflict.”⁴⁹ According to his statements, Westerwelle did not decline the possibility of a no-fly zone, but repentantly underlined the necessity of the involvement of the Arab League and a Security Council mandate.

Thursday, March 10th 2011

The situation in Libya worsened: Gaddafi’s troops continued their attacks against opposition troops. Airstrikes had been issued against opposition troops and one of Gaddafi’s sons, Saif al-Islam told Reuters, that the regime was preparing a huge strike against opposing forces. He stated: “The time’s up. Now we will take actions”.⁵⁰ Some rebels reported that the regime was using artillery and tanks against them. Rebels confirmed that some of their positions on the coastline had been bombarded from gunboats. Additionally, eye witnesses stated that the regime was close to taking the city of Ras Lasnuf. The International Red Cross confirmed that the number of civil victims was rising in the course of the conflict.⁵¹

Within the European Union a movement became visible among member states: France was the first one to officially recognize the NTC – a move that baffled the German government, since France had not informed Germany of its intentions.⁵² Regarding its behavior, a French diplomat mentioned that using this “electroshock diplomacy”, France hoped to move other European countries to take a stand in the crisis.⁵³ Besides governmental measures, the French intellectual Bernard Henri-Levy⁵⁴, who travelled to Libya on March 4th, claimed that he established a communication channel between the NTC and the French President Sarkozy.⁵⁵ Some media reported that Sarkozy had not even informed his Foreign Minister Juppé on the plan to recognize the NTC – which resulted in serious tensions within the French government.⁵⁶ Since his predecessor had caused a scandal and was forced to leave her position, Juppé was just recently appointed as Foreign Minister on February 27th 2011. He stated that he would announce his resignation, should Sarkozy proceed to surpass him in important decisions.⁵⁷

With a view to the before mentioned scandal, Sarkozy probably wanted to rebuild France’s reputation in Northern Africa.⁵⁸ Therefore, France underlined that it was willing to assist the opposition groups through military means to protect the population against the Gaddafi regime.⁵⁹ The French Ministry of Foreign Affairs announced that Sarkozy wanted to suggest to the European Union to impose airstrikes on Libya and the French newspaper Le Monde stated that France was working with Great Britain on a Security Council resolution draft which included a no-fly zone.⁶⁰

Germany was not informed about Sarkozy’s intention to recognize the NTC which highly irritated Germany and illustrated the worsening of the French-German relations. Once partners, France had followed its own agenda without prior consultation with Germany. While Germany did its best to slow the process in the aftermath of Resolution 1970, France wanted to speed up developments. Within the European Union, there was still no consensus on how to deal with Gaddafi and Libya as a whole. Given France’s recognition of the National Transitional Council, Westerwelle insisted that the Council needed to be reviewed by UN and EU rapporteurs to determine whether the Council could be regarded as a legitimate representation of the Libyan public before its recognition could be considered.⁶¹ As part of its political response to the situation, Germany proceeded to impose its economic sanctions

and asset freezes of Libyan bank accounts situated in Germany.⁶² It further insisted that sanctions should be the matter of choice in dealing with the Gaddafi regime; the Foreign Minister once again underlined that a no-fly zone was a serious military intervention which the German government still viewed critically. He insisted that Arab states needed to be included in any kind of an intervention in Libya.⁶³

March 10th marked the beginning of the two-day NATO Defense Ministers conference in Brussels. Participants could not agree on a common statement regarding a no-fly zone. The United States and Germany remained skeptical whether a no-fly zone would be suitable to deliver the desirable results. The German minister of defense, De Maizière, stated that “the situation in Libya does not serve as stepping stone for a military intervention whatsoever for the NATO”.⁶⁴ He once again stressed that the crisis in Libya needed to be solved within the country and the region itself, and further underlined that Security Council mandate as well as involvement of the Arab League would be crucial. In contrast, Great Britain and France argued in favor of the establishment of a no-fly zone – thus, the only statement the ministers could agree on was that a no-fly zone backed by a United Nations’ mandate and the consent of Arab states in the region.⁶⁵ Experts at the Pentagon pointed out that military involvement of the United States was crucial for the operation to be successful.⁶⁶ In a private conversation, US Minister of Defense, Robert Gates, expressed the US’ willingness to establish a no-fly zone to NATO Secretary General Anders Fogh Rasmussen, but underlined the fact that an UN mandate, participation of the countries in the region as well as NATO command were necessary for this kind of operation.⁶⁷ Rasmussen expressed his worries that Germany would not accept a NATO operation since it wanted to see the European Union taking a lead regarding conflict resolution in Libya.⁶⁸

In the evening of March 10th, Sarkozy and Cameron sent an open letter to the President of the European Council, Hermann Van Rompuy, in which they demanded serious measures to stop the Gaddafi Regime from further imposing violence on its own population. To pursue this goal they offered a list of seven bullet points which included Gaddafi’s resignation and the official recognition of the NTC. Both expressed their willingness to support the establishment of a no-fly zone and subsequently tried to win supporters for their draft resolution which they planned to present to the Security Council in the near future.⁶⁹

Overall, the US administration remained skeptical. Hillary Clinton stated before Congress that the US should not intervene unilaterally. Similar to Robert Gates, she stated: “We had a no-fly-zone over Iraq. It did not prevent Saddam Hussein from slaughtering people on the ground and it did not get him out of office”.⁷⁰

The Gulf Cooperation Council met on the very same day and denied the Libyan regime the legitimacy to speak on behalf of the Libyan population – caused by recent events in Libya and the actions that the regime had taken against its own population. The Gulf Cooperation Council further promoted dialogue with the National Transition Council as representatives of the Libyan population – the Foreign Minister of Qatar officially called on Gaddafi to resign.⁷¹

The African Union addressed the situation in Libya as well. Its Peace and Security Council met on state level and agreed on sending a diplomatic mission – consisting of five African heads of state – to

mediate between Gaddafi and the rebels.⁷² The AU expressed its concern regarding the situation in Libya but stressed the importance that the unity and sovereignty of Libya remained untouched.⁷³ Libya, as a member of the African Union, was present at the talks.⁷⁴ The AU also rejected any kind of foreign military intervention in Libya.⁷⁵

Friday, March 11th 2013

Gaddafi's troops gained more ground in Libya while opposition troops had to retreat and move closer to Benghazi. Some reported that rebels retreated from the city of Ras Lasnuf; further the city of Zawija was under the control of regime troops. Saif al-Islam, Gaddafi's son, announced a huge strike against the rebels. Libya suspended its diplomatic relations with France due to France's recognition of the National Transitional Council.⁷⁶

On March 11th, the extraordinary European Council on EU Southern Neighborhood and Libya was held. The gathering also included an informal meeting of the European Foreign Ministers in Brussels. Participants agreed regarding the fact, that Gaddafi needed to resign and the violence ought to be stopped.⁷⁷ Nonetheless, the outcome document of the summit did not include any statement on the establishment of a no-fly zone, or any other military intervention. Germany, amongst others, actively sought to prevent such wording in the outcome document, against the opposition of France and Great Britain.⁷⁸ Herman van Rompuy stated at the press conference following the extraordinary European Council:

"The safety of the people must be ensured by all necessary means. The European Council expresses its deep concern about attacks against civilians, including from the air. In order to protect the civilian population, Member States will examine all necessary options, provided that there is a demonstrable need, a clear legal basis and support from the region. We will work with the United Nations, the Arab League, the African Union and our international partners to respond to the crisis. We call for the rapid holding of a summit between the Arab League, the African Union and the European Union".⁷⁹ France and Great Britain though did not want to exclude the possibility to support an intervention by the Arab League, even without UN mandate. Participants agreed that they would accept the National Transitional Council as representative of the Libyan population whereas Germany insisted that the National Transition Council was not necessarily to be seen as the sole representative of the Libyan population.⁸⁰

Chancellor Angela Merkel underlined Germany's skeptical attitude towards military intervention at the extraordinary summit and stated that she did not consider an intervention to be necessary.⁸¹ Further, she expressed her dissatisfaction regarding the incoherence among the states of Europe which – in her opinion – played in favor of Gaddafi.⁸² Her critique aimed in particular at Portugal and Greece since both of them had engaged in talks with Gaddafi, regardless of the fact that the European Union did not consider him the legitimate representative of the Libyan population any more.⁸³ Journalist Majid Satar noted in the aftermath of Resolution 1973 that according to Westerwelle, Merkel had been much more hesitant in regard to a military intervention than he himself.⁸⁴ During a campaign event for the upcoming elections on the state level in Germany, Merkel once again stated that a no-fly zone was a serious military action and expressed her intention that sanctions should be fully exploited instead.⁸⁵

Meanwhile, Germany started to initiate a first dialogue with the National Transition Council. The Foreign Ministry confirmed that Andreas Michaelis, expert for the Near East, has held a conversation with Ali Asis Al-Eisawi, who was responsible for the Council's external affairs. But still, the Libyan opposition blamed Germany for its reluctant behavior and criticized its reservation towards the recognition of the National Transition Council.⁸⁶

Saturday, March 12th 2011:

The Arab League held a meeting while opposition troops in Libya lost further ground.⁸⁷ Previous to the meeting of the AL, both representatives of the Gaddafi-regime as well as representatives of the opposition demanded to be heard in front of the Arab League. Within the league, there was no consensus visible by that point. Some states were in favor of supporting a no-fly zone due to the fact that their own population was outraged by the brutality of the Gaddafi regime. Others were skeptical whether the support of the Libyan rebels would backfire for those supporting them and strengthen oppositional forces within their own countries. In contrast to the relatively homogenous position of the Gulf Cooperation Council, it was not clear in the beginning of the session how the Arab League would position itself in regard to the situation in Libya.⁸⁸ During the consultations, representatives of Syria and Algeria pointed out that the situation in Libya could destabilize the region as a whole.⁸⁹ The League finally decided, while referring to its previous statement dated March 2nd 2011: "1. To call on the Security Council to bear its responsibilities towards the deteriorating situation in Libya, and to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation, [...] while respecting the sovereignty and territorial integrity of neighboring States, 2. To cooperate and communicate with the Transitional National Council of Libya and to provide the Libyan people with urgent and continuing support as well as the necessary protection from the serious violations and grave crimes committed by the Libyan authorities, which have consequently lost their legitimacy, 3. To reiterate the call on Member States, [...], international organizations [...] to provide support and urgent humanitarian assistance to the Libyan people during this critical period of their history through various channels [...]". Further, the League declared its willingness to cooperate in questions regarding Libya with the African Union, the United Nations, the Organization of Islamic Conference and the European Union.⁹⁰ Amr Moussa, the Secretary General of the League, stated that the establishment of a NZF should be pursued in cooperation with the UN, the Arab League, the African Union and the European Union. Since some members of the League remained skeptical (namely Syria, Algeria, Yemen and Sudan),⁹¹ emphasis was laid on the fact that the establishment of a no-fly zone did not equal a long-standing military intervention by foreign forces.⁹²

In reviewing the developments, Hillary Clinton stressed the crucial position of the Arab League, since the establishment of a no-fly zone had been tied to the necessary support of the states in the region. Clinton concluded: "If the Arabs were willing to take the lead, perhaps an international intervention was not impossible after all".⁹³ She proceeded: "the turning point was really the Arab League statement [...] that was an extraordinary statement in which the Arab League asked for Security Council action against one of its own members".⁹⁴ As a reaction to the statement of the Arab League, the Gulf Cooperation Council joined it in its demand.⁹⁵ Now the attention turned towards the Security Council. There, Permanent Members China and Russia repentantly expressed their concern whether a no-fly zone would lead to success.⁹⁶ In the aftermath of the Arab League declaration, British and French repre-

sentatives met with representatives of the Permanent Mission of Lebanon (by that time one of the Non-Permanent Members of the Security Council) to work on a draft resolution which included the establishment of a no-fly zone.⁹⁷

Foreign Minister Westerwelle once again called for restraint regarding military options and suggested that it was necessary to initiate talks with Libya's neighbors. He stressed that it was crucial to avoid the impression that the West was on "a crusade" against Muslim faith.⁹⁸ In an interview dating from the same day with the German newspaper "Magdeburger Volksstimme", Westerwelle stated that a no-fly zone was an "option", but the German government would remain hesitant. Westerwelle once again underlined that a no-fly zone needed a Security Council mandate, and not only the support of other countries in the region but also their active involvement in such an operation.⁹⁹

Monday, March 14th 2011:

Fighting in Libya continued. Fighter jets of the regime troops attacked the eastern Libyan city of Adshdabja; oppositional fighters reported that they had again seized the city of Al Brega; fighting continued in Misrata as well; it was reported that the city of Ras Lasnuf was resized by regime troops.¹⁰⁰ One day earlier, on March 13th, a delegation of the European Union had been sent to Benghazi, to collect information and support the ongoing planning of a reaction to the Libyan crisis, according to the High Representative of the Union for Foreign Affairs and Security Policy for the European Union, Catherine Ashton.¹⁰¹

Meanwhile, the Security Council discussed on the informal level how a no-fly zone over Libya could be established. Lebanon initiated the meeting, since it believed that the Arab League's statement had turned the tables for the international community.¹⁰² Before the session started, the British Foreign Minister William Hague stressed that time had come for a no-fly zone and that such a zone could be established even without a Security Council Resolution. During the meeting, Lebanon demanded the closure of the Libyan airways to keep civilians from being further harmed. A consensus among Security Council members could not be reached. Lebanon (as representative of the Arab States in the Council)¹⁰³ proceeded to work on the draft resolution together with France and Great Britain.¹⁰⁴

In the aftermath of the session, Russians Permanent Representative Vitaly Ivanovich Churkin remarked that "crucial questions" remained in regard to the establishment of a no-fly zone, i.e. who would be able to establish and maintain a no-fly zone.¹⁰⁵ Meanwhile, the Libyan news agency Jana published a comment according to which Gaddafi had offered large shares of the Libyan oil resources to China, India and Russia – probably hoping they would use their vetoes in the Security Council to prevent the establishment of a no-fly zone over Libya.¹⁰⁶ The US' position was ambivalent but diplomats were sure, that once the US would take a clear stance on the situation, an agreement among the members of the Security Council could be reached.¹⁰⁷

Meanwhile, the G8 Foreign Ministers convened in Paris. During this meeting, the differences between Germany and France became abundantly clear.¹⁰⁸ German Foreign Minister Westerwelle and his American counterpart Hillary Clinton were on the same side in Paris – along with Sergej Lavrov who critically questioned the French as well as the British Foreign Minister about the military feasibility of a

no-fly zone and its technical implications.¹⁰⁹ Meanwhile – before the conference took place, Hillary Clinton met the Foreign Minister of the Arab Emirates to figure out whether the Emirates were willing to support the establishment of a no-fly zone – to which the Foreign Minister approved.¹¹⁰ In the meantime, Germany's position as a clear opponent of a no-fly zone became more and more visible to the public.¹¹¹ During the press conference, following the meeting, Juppé claimed there was broad consensus on the NFZ – Westerwelle interrupted him and stressed the fact that the Foreign Ministers remain divided.¹¹² The differences between Germany and France remained unsettled during the conference – diplomats reported that the Foreign Minister of Germany and the Foreign Minister of France did not talk to each other because of said tensions for a couple of days in the aftermath of the conference.¹¹³

At 10 pm in the evening of March 14th, Mahmoud Jibril, the representative of the National Transition Council and Bernard-Henri Lévy arrived at the Hotel Westin in Paris, where the G8 Foreign Ministers convened their meeting. Jibril urged the Foreign Ministers to take action, since thousands of civilians were at risk and passivity in that regard would lead to situations similar to the genocide in Ruanda or those in the Balkans. He demanded international engagement in Libya.¹¹⁴

Germany remained reluctant towards an intervention. In the morning, before the Security Council met on the informal level, Westerwelle had once again stressed that the implications of a no-fly zone were unpredictable and also stressed that military intervention could promote further conflicts. He added that it was not definite whether a NFZ would end the violence in Libya. Peter Wittig, Germany's Permanent Representative to the United Nations also showed himself reluctant after the session of the Security Council; he underlined that the pressure on the Gaddafi regime to stop the violence should be raised by further sanctions.¹¹⁵

Tuesday, March 15th 2011

The situation in Libya intensified: Gaddafi's troops were approaching Benghazi. Spectators stated that the regime troops had re-seized two important harbor cities; rebels had fled the cities of Brega and Adshadjia. Since those two cities were no longer controlled by the rebels, Gaddafi's troops were on their way to Benghazi which was still the most important city for the rebels.¹¹⁶ The city of Misrata was equally under fire, also the city of Zuwara was re-seized by Gaddafi's troops.¹¹⁷ Due to the ongoing conflict, the economic situation of Libya worsened as well – the International Energy Agency reported that Libya stopped exporting oil as a result of the conflict.¹¹⁸

Germany's critical position towards the establishment of a no-fly zone was highlighted when Gaddafi appeared on television, where he labelled Nicolas Sarkozy as mentally disturbed, whereas he applauded the German position: "The Germans have taken a very good position towards us, contrary to many other countries in the West"; he assured the German government that it would receive further orders regarding the oil production in Libya.¹¹⁹

On the second day of the G8 Foreign Minister conference, participants commonly criticized the actions of the Gaddafi regime but still could not agree on a common language regarding the situation in Libya. The final declaration of the conference did not include any reference to the establishment of a no-fly zone, but rather called on the UN to further impose sanctions. David Cameron insisted on Britain's

course and stated that not only a no-fly zone could be a desirable solution but also the delivery of weapons to oppositional groups.¹²⁰

In the afternoon, Obama discussed the different implications of a no-fly zone with his team. Hillary Clinton had reported to the White House that NATO was ready for such an operation and members of the AL had also shown their willingness to fight against Gaddafi.¹²¹ The National Security Council remained divided: Obama's team equally consisted of supporters and opponents of an intervention,¹²² so the decision in favor or against an intervention had to be made by the President. Obama finally decided to back those in his team in favor of an intervention and supported the arguments of Rice and Power.¹²³ One of the reasons he voted in favor of an intervention was the aversion of a massacre since Gaddafi's troops were on the verge of seizing Benghazi.¹²⁴ This arguments in favor of an intervention fitted into the threshold criteria according to the Responsibility to Protect.¹²⁵ Above that, the American government hoped that its support of Resolution 1973 would give the US the opportunity to highlight issues of democratization and human rights in its foreign policy and to support democratic movements in the Middle East.¹²⁶ It became clear that a Resolution not only had to establish a no-fly zone but needed to include "all necessary means" for the protection of civilians.¹²⁷ Gaddafi's menacing rhetoric, the position of the Arab League and pressure through France and Great Britain within NATO convinced Obama to change his attitude.¹²⁸ Since the US had shifted its position, Susan Rice now supported the draft resolution which was prepared by Lebanon.¹²⁹ She did not inform the German Representative, Peter Wittig, in a timely manner of the shifted position of the US – therefore the German government did not have immediate information on the changed situation. The German Minister of Defense, De Maizière was on his way back from a meeting in Washington and would report to the Chancellor that the Obama administration was still skeptical towards an intervention since he also did not know about the change of plans.¹³⁰

Developments now began to speed up without knowledge of the German government: Hillary Clinton met Amr Moussa in Cairo to discuss how the Arab League would take part in the establishment of a no-fly zone. Moussa assured Clinton that the United Arab Emirates and Qatar were willing to contribute fighter jets and pilots to the establishment of a no-fly zone. Later Jordan agreed to contribute as well.¹³¹

On the evening of March 15th, France's President Sarkozy addressed a letter to all Members of the Security Council and pointed out that Gaddafi continued to impose violence on his citizens and proceeded to violate Resolution 1970. Sarkozy urged the Security Council Members to join the resolution to establish a no-fly zone prepared by France, Great Britain and Lebanon.¹³² The resolution draft included "all necessary means" to protect civilians and secure the access to humanitarian aid.¹³³ The Lebanese Representative Nawaf Salam stated that his government in cooperation with the Permanent Mission of Libya to the United Nations prepared the part of the resolution which dealt with the establishment of a no-fly zone, whereas representatives of France and Great Britain worked on the part of the draft that urged further sanctions against the Gaddafi regime. India, Russia, China and Germany expressed their unease with the resolution draft. They argued the draft lacked important details and was not suitable to be put to the vote.¹³⁴ At the meeting of the G8 Foreign Ministers, Westerwelle once again stressed his reluctance towards a no-fly zone as well as a German participation in the establishment of such a zone and referred to a "war" which was likely to happen: "I do not want Germany to

be permanently involved in a war in North Africa”.¹³⁵ He stressed that a military intervention in Libya could put the whole liberation movement in Northern Africa at a risk.¹³⁶

Wednesday, March 16th 2011:

Gaddafi’s troops moved even closer to Benghazi; sources on the ground reported of massive fighting. The Libyan government stated that it planned to crush the revolt soon: Saif al-Islam stated that “within 24 hours, everything would be over”. Since the situation worsened, the NGO “Medicines sans frontiers” pulled its members out of Benghazi.¹³⁷ The NTC warned that the regime could commit a massacre and once again urged the international community to establish a no-fly zone.¹³⁸ Hillary Clinton stated in an interview that Gaddafi wanted to “turn back time and kill as many civilians as possible”.¹³⁹

At 1 pm German time, the session of the German Bundestag started in which Foreign Minister Westerwelle made a statement on the situation in Libya and Germany’s position towards it. He still rejected the option of a no-fly zone and stated the necessity to impose more pressure on the Gaddafi regime through sanctions.¹⁴⁰ He proceeded: “In Libya, a dictator wages war against his own population [...]. With what he has done, Gaddafi has positioned himself outside of the international community. He has forfeited any legitimacy. This is the position which the German government has made clear from the beginning, this will not change, even though Gaddafi expresses foul kindness towards Germany.”¹⁴¹ He continued: “But the seemingly easy solution of a no-fly zone poses more questions than it is able to answer. A no-fly zone is – although the word seems innocent – a military intervention that is not even guaranteed to be effective in a country as Libya. I may draw your attention to the fact that Libya is four times the size of the Federal Republic of Germany”.¹⁴² Thus he concluded: “The government of Germany is very skeptical towards military action in Libya. We do not want to and we must not become part of a civil war in Northern Africa. We do not want to enter a slippery slope where at its end German soldiers are part of a war in Libya”. At this point, Members of Parliament from the FDP, CDU/CSU and the Left applauded Westerwelle – a delegate from the left party shouted: “He’s right, he doesn’t need to be ashamed of it!”¹⁴³ Some representatives from CDU, the Green Party and SPD criticized Westerwelle for his behavior and stated that he had forfeited any political scope for action – but they also made clear that this was their personal opinion.¹⁴⁴

On Wednesday morning, US-time, Susan Rice had finally notified Peter Wittig about the changed US position in regard to the resolution. Wittig immediately informed the German government about the shifted US position, which means that the Germany government knew – because of the 6 hour time difference between New York and Berlin – on Wednesday afternoon about the changed situation.¹⁴⁵ Given that, Westerwelle did not know about the changed position of the American government when he gave his speech in the Bundestag.¹⁴⁶

Wednesday afternoon, US-time, the Security Council discussed the resolution draft which was introduced by France in the morning.¹⁴⁷ This draft already included changes that the US had made during the night.¹⁴⁸ The US argued in favor of a resolution encompassing more than a no-fly zone, including further military measures to protect the population in Libya. Additionally the US wanted to make sure the resolution stated that the Arab States would take the lead in political as well as military means.¹⁴⁹ Russia still voted for an alternative resolution that aimed a ceasefire in Libya instead of a no-fly

zone.¹⁵⁰ All participants of the negotiations acted under a lot of pressure – the situation became more difficult for the German government since the time difference made it even more difficult for the German diplomats to follow the consultations closely. Hillary Clinton stated in the evening, US-time, that the US would push the Security Council to vote on Thursday evening on the resolution.¹⁵¹

Thursday, March 17th 2011

The Libyan air force bombed the airport in Benghazi and Gaddafi announced on the radio that he would attack and seize the city during the night, stressing that he would show “no mercy”.¹⁵² Further, Gaddafi appeared on Portuguese television and that he would turn the lives of everyone who would attack Libya to hell.¹⁵³ He further announced that his troops would search every house, find the rebels and that the uprising would find its end this very night.¹⁵⁴

For Thursday morning, a visit of the newly appointed French Foreign Minister Juppé in Berlin was scheduled but Juppé cancelled his visit to be able to travel to New York to participate in the negotiations at the Security Council.¹⁵⁵ France was still afraid whether the resolution would pass the Security Council – staff of the French mission tried to convince colleagues of the German Mission to support the resolution.¹⁵⁶

On the very same day, Hillary Clinton called Russian Foreign Minister Lavrov.¹⁵⁷ The day before, Moscow had still shown its reluctance towards the draft that included a no-fly zone and suggested that the Security Council should turn towards a resolution that aimed at a ceasefire instead of a no-fly zone.¹⁵⁸ Clinton now tried to convince Lavrov that the situation in Libya was not comparable to the situation in Iraq or Afghanistan and assured him that the resolution which was backed by the US also included the establishment of a ceasefire. Lavrov stated that he could not vote in favor of the resolution but he assured Clinton that Russia would not vote against the resolution and therefore allow it to pass.¹⁵⁹ Hillary Clinton talked further to the Portuguese Foreign Minister Luis Amado who had been reluctant towards the establishment of a NFZ as well and illustrated that the resolution did not aim to start a war but rather was meant to serve as a “wake up call” to stop Gaddafi. Amado accepted Clinton’s explanation and agreed to vote in favor of the resolution.¹⁶⁰ Barack Obama called South Africa’s President Jacob Zuma in the meantime and tried to convince him to vote for the resolution while Susan Rice lobbied in New York on ambassadors level.

In the morning, German time, Westerwelle once again expressed his views on a no-fly zone in an interview with the Deutschlandfunk and rejected the establishment of a no-fly zone as a solution that seemed too simple to him. He once again stressed that Germany must not be part of civil war in Libya: “I do not want to get involved in a military intervention in Libya with German soldiers, thus I am opposing this. This lies within the responsibility of the Arab States of the region, especially within those neighboring countries, the Arab League has to take on its responsibility and I do not want Germany to become part of a civil war, of a lasting civil war in Libya”.¹⁶¹

At 9 a.m. German time, the session of the German Bundestag started, discussing the new energy policy of the government, including a statement of Chancellor Merkel – a huge challenge for Chancellor Merkel and her Foreign Minister and Minister of Defense, since - due to the upcoming elections - it

had been difficult to pay equal attention to the different political issues on the agenda. It took until 2 pm that day until the diplomats of the Ministry for Foreign Affairs could convene with Westerwelle (who had to be present in the Bundestag) on the situation in Libya. Those who met with Westerwelle were: Thomas Bagger, Thomas Michaelis, Michael Freiherr von Ungern-Sternberg, Emily Haber, Wolf-Ruthart Born and Peter Wittig who was involved via video call from New York. Westerwelle's team wanted to discuss the consequences of the German voting behavior. Wittig opted for a German "yes" in the Security Council but against a military involvement of Germany. Emily Haber is also reported to have urged Westerwelle to vote in favor of the resolution.¹⁶² The fact that many issues had to be treated at the same time, as well as the time difference between New York and Berlin now shaped the situation.

Shortly after Westerwelle's team had met in Berlin, the Security Council in New York met on expert level for a technical discussion which started at 3 pm German time.¹⁶³ For 5 pm German time, a session on the level of the Permanent Representatives was scheduled. In the meantime, Westerwelle's team in Berlin met again and the Foreign Minister (against the advice of his experienced colleagues) insisted that it was impossible to vote in favor of the resolution but to abstain from participating in a military intervention.¹⁶⁴ Westerwelle argued in the same way in the meeting at the Chancellery when he, Merkel, and De Maiziere discussed Germany's final statement on the issue. At this meeting, the foreign- and security policy expert Christoph Heusgen backed Emily Haber's plea for voting in favor of the resolution.¹⁶⁵ Merkel and her ministers stated that voting in favor of the resolution but abstaining from military action would not be practicable and would result in dissatisfaction within the population.¹⁶⁶ Merkel and Westerwelle had already taken a stance in the public, opposing the option of a no-fly zone. Thus, the final decision to abstain from the vote was made in the course of last-minute calls when Merkel assured David Cameron that Germany would vote in favor of the resolution if the resolution would otherwise fail, while she refused to accept a call by Barack Obama.¹⁶⁷ The Portuguese Foreign Minister Amado told Westerwelle that his country, regardless of its earlier reluctance against the resolution, would vote in favor of the resolution. This meant that a German abstention from the vote would not stop the resolution from passing – if this would have been the case, the political cost for Germany would have been even higher.¹⁶⁸

It became clear in New York at 10 pm German time, that none of the Security Council members would vote against the resolution.¹⁶⁹ During the vote at 12 pm midnight, Germany abstained from the vote together with China, Russia, India and Brazil. Member states in favor had been: France, Great Britain, USA, Bosnia and Herzegovina, Columbia, Gabon, Lebanon, Nigeria, Portugal and South Africa. Peter Wittig expressed the German vote as follows: "We have gathered today to address the serious situation in Libya. Our intention is to stop the violence in the country and to send clear messages to Al-Qadhafi and his regime that their time is over. Muammar Al-Qadhafi must relinquish power immediately. His regime has lost all legitimacy and can no longer be an interlocutor for us. [...] Aspirations to democracy and human and individual rights merit our full support. They offer unique opportunities for political, social and economic transformation. To achieve this goal, we seek close cooperation with our partners in the region, in particular the League of Arab States and the African Union. Our aim is to promote the political transformation of Libya. We see a need to stop the violence and to start a true political process. The basis for democracy and the rule of law in Libya needs to be established and broadened. [...] We are particularly concerned about the plight of the Libyan people and the wide-

spread and systematic attacks they are suffering. It is therefore crucial that we tighten the sanctions against the Al-Qadhafi regime even more. We need to cut it off from the financial means that have helped it to remain in power. In our view, strong sanctions, backed by the whole international community, will be an effective way to end the rule of Muammar Al-Qadhafi and thereby to initiate the necessary political transition. We have contributed a number of proposals in this regard. Germany fully supports the package of economic and financial sanctions in the resolution just adopted. Decisions on the use of military force are always extremely difficult to take. We have very carefully considered the option of using military force — its implications as well as its limitations. We see great risks. The likelihood of large-scale loss of life should not be underestimated. If the steps proposed turn out to be ineffective, we see the danger of being drawn into a protracted military conflict that would affect the wider region. We should not enter into a military confrontation on the optimistic assumption that quick results with few casualties will be achieved. Germany therefore decided not to support a military option, as foreseen particularly in paragraphs 4 and 8 of the resolution. Furthermore, Germany will not contribute to such a military effort with its own forces. Germany therefore decided to abstain in the voting.”¹⁷⁰

Part II: Dossier

The dossiers will give the reader an orientation regarding the context within the German government acted. It therefore includes an overview of the work of the Security Council and Germany's role in the Security Council as non-permanent member; the guidelines of German foreign policy as well as the concept of the Responsibility to Protect. Further orientation regarding the large number of meetings on the situation in Libya can be taken from the following table.

List of international meetings and conferences in the context of the Libyan crisis

Date	Organization	Specification of the Meeting
02/21/2011	UN	Security Council (informal)
02/22/2011	UN	Meeting of the Human Rights Council
	AL	
	UN	Security Council
02/23/2011	AU	Meeting of the Council for Peace and Security
02/25/2011	UN	Security Council
	UN	Human Rights Council
02/26/2011	UN	Security Council: Resolution 1970
03/01/2011	UN	Meeting of the General Assembly
03/07/2011	GCC	
03/08/2011	OIC	
	UN	Security Council
03/10/2011	AU	Council for Peace and Security
	NATO	Meeting of the Ministers of Defence in Brussels
	GCC	
03/11/2011	EU	Informal meeting of the European Foreign Ministers
	EU	Extraordinary European Council on EU Southern Neighborhood and Libya
03/12/2011	AL	Meeting of the Foreign Ministers
	GCC	
03/14/2011	G8	Meeting of the Foreign Ministers
	UN	Security Council (informal)
03/17/2011	UN	Security Council: Resolution 1973

1. The United Nations Security Council

The Security Council is the United Nations' executive organ.¹⁷¹ It consists of five Permanent (Great Britain, France, Russia, China, and the United States – the victorious allies of the Second World War) and ten non-permanent members, which are appointed for a two years period by the General Assembly, following a specific regional distribution (Africa: 3, Eastern Europe: 1, Asia, Latin America, Western Europe and Others: each 2). According to Chapter VII of the Charter of the United Nations, the Security Council is able to pass binding resolutions, direct the attention of the international community to a specific topic and sanction actions which are likely to threaten world peace. Regarding sanctions,

the measures which the Security Council can take range from appeals to conflict parties, economic sanctions, diplomatic and non-military means to the use of force. Such measures need a majority of nine of the 15 members of the Security Council to be passed. Further, none of the Permanent Members must vote against such a resolution. However, it is possible that a Member of the Security Council abstains: The abstention does not block the resolution from passing but will not be added to the nine Yes-votes which are necessary for the resolution to pass. With their accession to the United Nations, Member States of the organization acknowledge that they have to abide the legitimacy and support the resolutions of the Security Council. However, the Security Council does not hold troops of its own (different to what was indicated in the Charta) and therefore depends on the provision of troops from Member States. The composition of the Security Council as well as its functioning had been and still is subject to criticism. In this context, a group of four states, Germany amongst them, advocates for Security Council reform including additional permanent seats. Other than Germany, this group consists of India, Japan and Brazil. Thus, the composition of the Security Council during the decision making process regarding the situation in Libya was of interest, since those countries – except Japan – and South Africa (which also lobbies for Security Council Reform) were members of the Security Council by that time. This constellation could represent a foreshadowing of how a reformed Security Council would look like. In March 2011, the following states were present as non-permanent members of the Security Council as well: Gabon, Nigeria, Lebanon, Bosnia-Herzegovina and Columbia.

Germany had been a non-permanent member of the Security Council five times: 1977/78, 1987/88, 1995/6, 2003/4 and 2011/12.¹⁷² Before Resolution 1973 was passed, Germany had voted 351 times in the Security Council. Among those 351 votes, there is no single incident where Germany voted against a resolution. An abstention from vote was equally rare: Germany had abstained in just six cases.¹⁷³ Regarding the abstention from vote there is a difference (on the diplomatic level) between a Permanent Member and a non-permanent Member of the Security Council: if a Permanent Member abstains from its vote, it concurrently refuses to use its veto to block the resolution from passing. Therefore, an abstention from vote from a Permanent Member of the Security Council can be regarded as an indirect “yes”. In contrast, if a non-permanent Member abstains from its vote it reduces the possibilities of votes in favour of the resolution, whereas an abstention here is regarded as an indirect “no”. Given this, Members of the Security Council try to vote consensually and avoid open controversies for or against a resolution. Security Council Members will negotiate and look for opportunities for consensus until the outcome can be supported by all members. This may take a long time and may not be the optimal solution, especially in times of crisis.

At the beginning of Germany’s term as non-permanent member of the Security Council, Foreign Minister Westerwelle outlined the main areas of German interest: crisis management and crisis prevention, advocacy for Human Rights and the fight against terrorism.¹⁷⁴ In an interview with the German paper BILD, Westerwelle stated that Germany wanted to take part in “the solution or prevention of regional conflict and in international peace overall. Germany is seen as a very reliable country at the United Nations”.¹⁷⁵ The German government states in its review of its membership in the Security Council for the year 2011: “The first year of the German membership in the Security Council was strongly shaped by the political unrest in the Arab world. The Security Council reacted quickly to those developments by passing Security Council resolution 1970 (2011) on February 26th 2011. Germany supported the reference of the case to the International Criminal Court, further a weapon embargo was put in place

against Libya as well as travel bans and asset freezes against members of the Libyan government. With resolution 1973 (2011) which was passed on March 17th 2011, the Security Council authorized the use of “all necessary means” and a no-fly zone, to secure the well-being of civilians who were in immediate danger. Germany abstained from the second resolution because of the risks a military operation involved. In the following, the implementation of resolution 1973 (2011) led to a controversy in the Security Council”.¹⁷⁶

2. The Responsibility to Protect

The concept of the Responsibility to Protect is deeply connected to the question at what point intervention in the internal affairs of another state, even against the will of said state, may become possible or even necessary.¹⁷⁷ The Charter of the United Nations explicitly protects the sovereignty of the state and its Member States have further accepted a general prohibition of violence in international politics. Besides immediate self-defence, only the United Nations Security Council is able to impose military measures – following the common interest of the international community. The question at what point such measures seem to be justified has long been unanswered, partly due to the ideological blockade of the Security Council during the Cold War, partly due to different interpretations concerning Human Rights or the right to national sovereignty. Instead of a common intervention on basis of a Security Council Resolution, states intervened (such as India in East-Pakistan in 1971, Vietnam in Cambodia in 1978 or Tanzania in Uganda in 1979), although they intended to stop atrocities within a country, they justified their action legally as an exercise of their right to self-defence. As the Cold War came to an end, possibility was given to revive the Security Council and its instruments: milestones were Resolution 688 in the year 1991 which interpreted the large scale flight of Kurds from Iraq as a threat to international peace and security which moved the situation from an issue of internal responsibility to one with an international dimension.¹⁷⁸ A similar argumentation can be found in Resolution 794 (1992), when the Security Council turned towards the situation in Somalia and stated that the threat of a humanitarian catastrophe posed a threat to international peace and security.¹⁷⁹ The Security Council increased its sensibility towards crisis situations that rooted in internal issues of states. Nonetheless, it was not possible to develop a coherent and unchallenged practice of humanitarian interventions based on these decisions. This became highly visible through the genocide in Ruanda and through the experience of ethnic cleansing in the former Yugoslavia. In both cases, the Security Council could not or was not willing (due to conflicting opinions within the Council) to prevent large scale loss of life. On the other hand, the example of Kosovo shows that not only “not acting” but also “acting” can have serious implications in the system of collective security. In the case of Kosovo, a group of states acted, using military means against Serbia – but without a Security Council mandate, since it was assumed that Russia would have blocked this with its veto.¹⁸⁰ In the face of the potentially antagonist imperatives of intervention to protect population from crimes and the protection of sovereignty against unlawful intervention, a high-level panel was tasked to come up with solutions to this problem: The international Commission on Intervention and State Sovereignty (ICISS).¹⁸¹

The concept of the Responsibility to Protect is the main result of the work of the commission, which published its report in 2001. According to the report, the responsibility for the protection of its citizens lies within the responsibility of the national government. Is the national government unable or unwilling to secure this protection, then an international responsibility becomes vital to shield citizens from large

scale loss of life. The Responsibility to Protect is designed as a comprehensive concept which includes the responsibility for the prevention of crisis situations, for immediate reaction towards ultimate danger as well as the responsibility in the aftermath of crisis. Only the second option stresses the use of force. The authorisation for the use of force lies exclusively within the responsibility of the Security Council, even though the report discusses several alternatives in case the Security Council might be blocked. Further, the report proposes threshold criteria to help distinguish whether a situation called for the Responsibility to Protect. Since it has first been issued, the concept has been debated widely and has been integrated into the outcome document of the 2005 World Summit, which was to date the biggest meeting of heads of states of the United Nations.¹⁸² In the World Summit's outcome document, the Responsibility to Protect is mentioned in the following paragraphs:

„138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability. 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. (...).“¹⁸³

Given this, the states that signed the Outcome Document had agreed to accept and implement the concept of sovereignty as responsibility of the state towards its citizens. From a juridical aspect, the Responsibility to Protect did not fundamentally change existing guidelines of international law.¹⁸⁴ The United Nations did not add a new paragraph to the existing body of international law, but initiated an international debate on intervention.¹⁸⁵ During the time that followed, the Responsibility to Protect was cited as a reference in a number of situations, with Resolution 1973 on Libya as the first clear manifestation of the R2P-rhetoric in a resolution of the Security Council.

Germany positioned itself supportive towards R2P: it supported the 2007 appointed Special Rapporteur on R2P of the Secretary General, Edward C. Luck, politically and financially. Further, the concept of the Responsibility to Protect concurred with the German commitment for the International Criminal Court, which sanctions genocide, crimes against humanity and war crimes if the national jurisdiction is unable to do so.¹⁸⁶ In the beginning of 2009, Germany supported the European Union in its efforts to promote R2P among Member States of the United Nations in New York. Germany regarded it as a part success that during the following debate of the General Assembly a high percentage of Member States showed basic approval of R2P.¹⁸⁷ Given this, Germany's abstention from vote regarding Resolution 1973 left many irritated.

In his governmental statement, dating March 18th 2011, Westerwelle defended the German abstention: “We explicitly support the elements of Resolution 1973 of the Security Council that aim at sharpening sanctions against the Gaddafi regime. It was our initiative to broaden economic and financial sanctions and we strongly supported that initiative. Germany was one of the first countries in Brussels as well as in New York calling for a clear stance against Gaddafi, for an isolation of the system Gaddafi and for sanctions against him – we made that clear at a very early point.”¹⁸⁸ Westerwelle further pointed out that sanctions against the Gaddafi regime had to be strengthened, argued that “Gaddafi wages war against his own people” but proceeded to explain that “Germany is not able to abolish suppression worldwide”.¹⁸⁹ He argued that voting in favour of the resolution would have led to a German deployment of troops which the German government rejected.¹⁹⁰ The Foreign Minister concluded: “it is clear to us: after carefully weighing the different options we came to the conclusion that we do not want to take part in combat in Libya with German soldiers. This is the reason why the government, why Germany abstained from the vote in the Security Council of the United Nations”.¹⁹¹

Member of Parliament, Wierzorek-Zeul argued that she considered the abstention from vote to be shameful: “Facing despots, there cannot be such thing as an abstention when discussing such decisions”.¹⁹² Further, Renate Künast from the Green Party also referred to the Responsibility to Protect and criticized the passive position of the German government.¹⁹³ Besides the two women, no other Member of the German Bundestag referred to the importance of the Responsibility to Protect regarding Resolution 1973. The Chairperson of the Foreign Committee, Ruprecht Polenz (CDU), pointed out that regarding the Foreign Minister insisting that “Gaddafi had to go”, Germany’s decision in the Security Council “lacked an operational concept” – especially since the conditions Germany had required (further regional involvement) had been met. Rolf Mützenich (SPD) assumed that Westerwelle was led by “domestic political motives” when he decided to abstain from vote.¹⁹⁴ Although, support of Westerwelle’s decision was visible, cross cutting through all parties in the Bundestag. This also included Frank Walter Steinmeier, Westerwelle’s predecessor and his successor, who stated that he understood Westerwelle’s decision.¹⁹⁵

After the vote in the Security Council, Member of Parliament Heidmarie Wierzorek-Zeul (SPD) (who had vocally opposed the German vote) raised the question in the German Bundestag which measures the German government had undertaken to implement the Responsibility to Protect. Secretary of State Emily Haber stated on behalf of the government on July, the 29th 2011: “The German government shares the assumption regarding R2P as it has been illustrated in the Outcome Summit of the Secretary General, were it is defined as a long term and cross cutting issue, which can be implemented only by coherent and sustainable action of the international community as a whole. The German government supports the peace-maintaining capacities of states, the empowerment of civil society and processes of political participation, including the involvement of women in peace building processes as well as democratization and the promotion of law enforcement through its human rights and development politics, its concept of civil conflict prevention as well as numerous other projects”.¹⁹⁶ The government report states further, that “the government [...] pursues the implementation of the Responsibility to Protect through the empowerment of regional and sub-regional mechanisms and institutions of conflict prevention in collaboration with its partners in the European Union and other international organizations. The government further funds the activities of the special rapporteur for R2P (Prof. Dr. Edward Luck) and the special rapporteurs on the prevention on Genocide (Prof. Dr. Francis Deng)

financially and politically. Germany is member of the group of friends on Responsibility to Protect".¹⁹⁷ It is noteworthy that there is no reference to the military implication of the Responsibility to Protect. Germany's focus lies mainly on the responsibility to prevent (RtoP). The report of the German government for the years 2011 and 2012 of the German membership in the Security Council states the same: "The main focus of the German RtoP engagement lies in the preventive aspect".¹⁹⁸

The Responsibility to Protect remains subject to debates. Within the concept of the Responsibility to Protect, the option of a military intervention is one instrument among others – contrary to popular belief – which include the responsibility to prevent a crisis, the responsibility to react to situations of crisis and the responsibility to rebuild in the aftermath of a crisis. As article 139 of the World Summit states, the international community commits itself "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity".¹⁹⁹ The ICISS report accordingly lists three responsibilities: the responsibility to prevent, to react and to rebuild. Military measures are a part of the responsibility to react that becomes vital when "preventive measures fail to resolve or contain the situation and when a state is unwilling or to re-dress the situation, then interventionary measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures and in extreme cases – but only extreme cases – they also may include military action".²⁰⁰ The intervention in Libya posed – besides the prevention of ultimate danger in Benghazi – further questions regarding the concrete interpretation of the Security Council resolution mandate as well as possible consequences of regime change and peace-building. The discussion revolves mostly – as the example of Syria shows – around the consequences of acting or non-acting. As the political debate in the aftermath of the Libya decision has shown, ethical motives become mixed with geostrategic and national interests.

3. German foreign policy

Fundamentally, foreign policy presents itself as a two-level game according to Putnam.²⁰¹ Accordingly, representatives of governments try to balance support for their actions on the domestic level and to realize their interest on the international level. This may reduce the freedom of action of foreign policy in the regard that the government aims to shape its foreign policy in a way that it is not conflicting with its domestic prevention of power.²⁰² Regarding the scope of this case study it needs to be pointed out that on March 27th 2011 elections were held in Baden-Württemberg as well as in Rheinland-Palatinate; thus the government was not only facing difficult decisions on the international level but also on the domestic level since its reaction towards the situation in Libya and its public perception could influence the outcome of those two elections. Such a definition of the two-level game requires decision makers to be able to identify phenomena, challenges and issues on the domestic as well as on the international level which can become very difficult in times of crisis.²⁰³ The logic of Putnam's two level game further implies the possibility that dynamics on the level of international negotiations can influence the calculation of interests on the national level. Facing issues such as the crisis in Libya, the German government was involved in a multitude of multilateral forums. The number of those forums and the

frequency of their meetings increased the dynamic of the last few days prior to the passing of Resolution 1973.

German foreign policy is shaped by the Second World War and its resulting experiences, thus it is focused on multilateral relationships and value-oriented. It is further shaped by the constitution, its western association through the European integration and NATO as well as the special relationship to France and the US in accordance with deep ties with Eastern Europe (especially with Poland). As leading export nation, Germany pursues a norm- and rule-oriented structure of globalization.²⁰⁴ The United Nations, where both German states became members on the 18th September 1973, fits within the values of German foreign policy values and holds an extraordinary position for the reunified Germany as well.²⁰⁵ The German reunification simultaneously changed the expectations the international community held against a re-unified Germany. This becomes visible when discussing Germany's role regarding military missions in foreign countries. Until the beginning of the 1990s, Germany refused to take part in UN operations – pointing out its specific history as well as the fact that the two German states were part of different military alliances.²⁰⁶ This changed with the decision of the Federal Constitutional Court dating from the year 1994: Germany now had to take on further military responsibility and reposition itself in that regard.²⁰⁷ What followed were military missions as part of UN mandated operations.

An important aspect of German foreign policy is its self-image of a “civilian power”.²⁰⁸ The concept aims at a civilization of international politics – which means the de-privatization of violence, the strengthening of the rule of law, the principle of justice and democratic participation as well as a constructive culture of conflict. A civilian power needs to be able to calculate the possibility of failure in its actions and accept this as a possible outcome of its actions.²⁰⁹ The concept, developed by Hanns W. Maull,²¹⁰ embraced in its original conception not only peaceful means but also the use of coercive military force by the international community, underscoring the need for Germany to prepare itself for such situations.²¹¹ The meaning of “civilian power” nonetheless has changed since political actors framed the concept as excluding military action.²¹² The concept surely is compatible with the imperative of a “culture of military restraint” as part of German foreign policy, which focusses more on preventive politics in advance of the outbreak of violence. But, “military restraint” can be interpreted in different ways: whether it encompasses criticism of other states which engage in military means as well as the strict exclusion of German military involvement even in times of international crisis. German Foreign Minister Westerwelle followed a very restrictive definition of “military restraint”; former German Foreign Minister Volker Rühe, who was involved in shaping this concept, did not share this restrictive view.²¹³ Regarding the different debates following the German decision to abstain from vote in the Security Council it becomes clear that Germany's principles, its guidelines and traditional role models can be interpreted in different ways and thus may come into tension and conflict.

As part of the analysis of the case study, the positioning of the Merkel government in terms of foreign policy is of special interest. The coalition treaty states the following regarding foreign policy: “Democracy, Human Rights, rule of law and a market economy system shape our actions for Germany in the world. We represent a foreign policy that is value oriented and led by interests. We represent a foreign policy that contributes to peace and security worldwide through disarmament. We will actively work for a common future with our partners in the European Union. We will revive the transatlantic relationship

for realizing an active foreign policy. We will face new international challenges and will thus accept Germany's role in Europe and the world. We will fulfil the obligations connected with our role in Europe and the world responsibly. We stand for peace, freedom and security within the international community."²¹⁴ The German commitment towards value oriented foreign policy is connected with the assurance that Germany will act responsibly on the international level. Regarding the longstanding partner US, the coalition states: "We are determined to seize the chances within the transatlantic relationship and will strengthen the bond of trust between Germany and the US systematically. We regard the close political cooperation with the United States as strengthening for the German interests which will increase our weight in Europe and worldwide."²¹⁵ Further, regarding international conflict management and conflict resolution: "For the international conflict prevention and conflict resolution, diplomatic efforts remain to us the most important measures. However the importance of sending civilian personal, trained in police and justice work, is rising. We have to be prepared, in accordance with our partners, to address moments of crisis with these instruments at an early point to be able to act quickly and reliable when crisis erupts."²¹⁶ Regarding the protection of Human Rights, the coalition states the following: "Germany's credibility is directly connected with the consequent commitment for Human Rights in the fields of foreign politics and development politics. Respect to Human Rights is fundamental for the democratic, economic and cultural development of every country. Physical and mental integrity, the freedom of thoughts and the freedom of speech and the freedom from discrimination are inalienable principles of our Human Rights politics. Also in our foreign relations, we speak up against every kind of discrimination in terms of religion, ethnic origin, gender or sexual orientation".²¹⁷ This focus on Human Rights was further accentuated on the institutional level: "We aim for the evaluation of the Rome Statute of the International Criminal Court with the goal to close existing punishment gaps. We profess to Germany's obligations in public international law and we are committed to a better enforceability of the international Criminal Code. [...] The United Nations Human Rights Council must not become a playground for national power-play but has to be established as an international mouthpiece against Human Rights violations."²¹⁸

In accordance with this position, Foreign Minister Westerwelle outlined at the beginning of the German non-permanent membership in the Security Council in 2011 the areas of interest for Germany as a member of the Security Council: crisis management and crisis prevention, engagement for Human Rights and the fight against terror.²¹⁹ In an interview with the German paper BILD, the Foreign Minister stated that Germany wants to contribute to "the solution or prevention of regional conflict and to the overall establishment of peace worldwide. Germany counts as a very reliable country at the United Nations."²²⁰ Thus, in the coalition treaty as well as in the programme for the German non-permanent membership in the Security Council one can find clear evidence that Germany wants to be able to stand up to its responsibility in times of crisis, that it wants to act quickly and responsible in that regard. Meanwhile Germany's credibility on the foreign level is connected to the implementation and maintenance of human rights. This is backed by a longstanding commitment to the Responsibility to Protect, which was critically challenged during the decision making process regarding resolution 1973.

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