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1. INTRODUCTION

The coming into force of the Lisbon Treaty is generally considered to be an important step in the further development of EU law. It is praised for bringing about greater efficiency, greater democracy and for bringing the Union closer to the Union’s citizens. The quest for a more democratic EU, in particular, has been a pivotal goal. In the perennial need to win over majorities for further integration, the promise of granting broader participatory rights has regularly been the bait. The manner of achieving this end was subject to intense discussion, but the overall consensus was that broader democratization should mainly be achieved by strengthening the role of the European Parliament (EP). With the Treaty of Lisbon the EP’s affirmation process, which started in 1957 at a very low-key level,¹ has come full circle. In this process, through which the EP managed to attract ever greater powers, the Common Commercial Policy (CCP), long held to be immune from any EU parliamentarian interference, also came within the Parliament’s orbit. The consequence of this reform is slowly seeping into public awareness. The democratization of the common commercial policy is equivalent to an enormous leap forward in the politicization of this field. As a consequence, a concept to which Ernst-Ulrich Petersmann has paid so much attention during his academic career² is called to mind: the so-called Lockean dilemma. According to this position, the executive function is subject to insufficient parliamentary control and, as a consequence, loopholes in the democratic system arise. Does the Lisbon Treaty finally solve the “Lockean dilemma”? This contribution shall provide evidence that there is no easy answer to that question. It is argued here, contrary to many positions taken in literature, that it is far from certain whether these reforms undertaken by the Treaty of Lisbon will have the desired effect. While the position as such, taken in favour or against stricter democratic control, is, of course, primarily of a subjective or a political nature, it may be interesting to inquire into the

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1 As will be explained below, in 1957 this body did not even exist under that name. It was rather called the “General Assembly”.
reasons and forces that have brought about such a result. It shall be shown that the whole discussion is based on many concepts which are far from neutral or uncontested. It seems that the European Union is entering into uncharted waters in this field. The further politicization of the EU commercial policy may have consequences that are unaccounted for by most and that are undesired by many. It is not certain whether the dangers associated with these developments can really be countered, but in order to attain this goal the respective risks should first of all be made evident.

2. The “Lockean Dilemma”

As is known, in 1690, the great English Philosopher John Locke made the following important point in his “Two Treaties of Government”:

The [external] power is much less capable to be directed by ... positive laws than the executive and so must be necessarily left to the prudence and wisdom of those whose hands it is in.3

The background to this observation was an evolving government system in England where the division of powers had become a reality. At the same time, an incongruity appeared: how was it possible that this division applied only at the internal level while externally the government had full powers? John Locke emphasized the political nature of these acts that made them less suitable for abstract and definite regulation. At first glance, this seems to be convincing: in international relations governments are no longer in a situation of supremacy, at least as long as they treat each other as members of the international society endowed with international subjectivity. It may be true that initially such a treatment was awarded only to a closer club of nations, often known as “civilized” states, but this group grew ever larger and there was a clear tendency, finally ending up in UN law, for all nations to be considered “civilized” and “equal”.

At the international level governments are required to observe international rules – rules the creation and evolution of which they may influence only to a rather limited extent, if at all. Their actions are strictly regulated by the rules of reciprocity.5 Each measure taken at the international level must take into

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4 As is known, Gerrit Gong has denounced the qualification as “civilized” as purely circular: the fact that a nation was integrated in the (mainly) Western society of nations qualified it as “civilized”. See G. Gong, *The Standard of “Civilization” in International Society* (Oxford, Clarendon Press 1984).

5 With regard to the principle of reciprocity see B. Simma, *Das Reziprozitätsprinzip beim Zustandekommen völkerrechtlicher Verträge* (Berlin, Duncker & Humblot 1972).