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DID CHINA INVENT EXTRATERRITORIALITY IN THE 21ST-CENTURY?

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In less than a decade, Beijing has transformed extraterritoriality—once an American tool—into a lever of geo-economic power. Faced with this silent legal revolution, Europe remains without a doctrine, vulnerable in a legal war it did not want to see coming.

When Frédéric Pierucci published *Le Piège Américain (The American Trap)* in 2019, he exposed a mechanism that many suspected existed without having named it: the strategic use of law for economic domination. Under the guise of fighting corruption, the US Department of Justice imposed colossal fines on Alstom before its energy division was sold to General Electric. This is the matrix of *lawfare*: a war waged through the law, where norms become weapons.

Twenty years later, China is adopting this method but adapting it to its own model. Since 2019, Xi Jinping has made the construction of a "socialist legal system with Chinese characteristics" a strategic priority¹⁴. The purpose of this system is no longer to defend itself against foreign interference: it now projects Chinese legal sovereignty beyond its borders. Between 2020 and 2021, a series of texts¹⁵ shaped a coherent body of law: extraterritorial law, Chinese style.

Extraterritoriality can only be understood at the intersection of law and geopolitics. For while the economy cannot exist without politics, politics cannot be exercised without law. Pascal Lorot¹⁶ defined geopolitics in 2002 as "the analysis of economic strategies decided by states as part of policies aimed at protecting their national economy or certain identified sectors thereof." It is precisely at this intersection that extraterritoriality comes into play: an instrument by which states project their interests beyond their borders, using norms as a vehicle of power. According to the definition proposed by French think tank *Institut Montaigne*, it refers to a situation where a state applies its legislative, executive, or judicial powers outside its territory—to sanction, protect, or coerce. Behind this apparent legal neutrality lies a logic of domination: that of a state extending its sovereignty by turning the law into an economic weapon. In its various forms—financial sanctions, embargoes, boycotts, export controls, competition regulations—extraterritoriality reveals a simple truth: the law has become one of the preferred languages of power in contemporary globalization.

Chinese extraterritoriality is therefore no longer a hypothesis: it has become an accepted instrument of Beijing's power politics. In just a few years, China has built a dense, precise legal framework that is applied with strategic rigor. Behind this accelerated codification lies a normative agenda: to defend its sovereignty while extending its economic influence beyond its borders. The European Union, which has so far been relatively spared, remains nonetheless exposed. The growing influence of these Chinese laws on trade, technology, and information flows is forcing a rethink of the continent's economic security. **This is the issue we explore here: understanding how extraterritoriality, which has become a tool of lawfare, is reshaping the balance of power between Europe and Asia—and why it remains, in the European debate, a blind spot that reveals our strategic lag.**

To understand this change, we must return to the very notion of extraterritoriality—not as a fixed legal category, but as a geo-economic instrument in the service of power. Behind the law, a power struggle is at play: that of a state's ability to impose its standards beyond its borders.

¹⁴ This is the legal definition of the Chinese regime: <http://en.cppcc.gov.cn/>

¹⁵ One example is the regulation on the list of unreliable entities (adopted and **entered into force on June 10, 2021. – Art. 3** (material basis: "discriminatory" foreign measures that infringe on China's sovereignty/interests). – **Arts. 10–12** (coordination mechanism, list of countermeasures, non-cooperation obligations), with **extraterritorial** effect recognized by doctrine and law firms (scope against foreign persons/entities); the Export Control Law (adopted on **October 17, 2020, entered into force on December 1, 2020. – Art. 2** (scope of control: dual-use goods, military goods, nuclear goods, technologies, services), **Art. 44** (extraterritorial application and liability of persons/entities **outside China**), **Art. 48** (retaliatory measures), the Data Security Law (Data Security Law of the PRC (DSL) — 中华人民共和国数据安全法 adopted by the Standing Committee of the NPC on June 10, 2021, effective September 1, 2021, Art. 2 (scope of application, including activities abroad that harm China's interests), Art. 36 (prohibits providing data to a foreign authority without prior authorization), regulations against the unjustified extraterritorial application of foreign laws.

¹⁶ Lorot P., "La géoéconomie, nouvelle grammaire des rivalités internationales" (Geo-economics, the new grammar of international rivalries), 1996

Under Xi Jinping, China has methodically built a legislative apparatus with global reach. By transforming the law into an extension of power, Beijing is redrawing the lines of sovereignty and exposing European vulnerabilities. This dynamic reveals the state of a world in flux, marked by interdependencies and competing rivalries. In this global disorder, law is becoming a battlefield and politics its interpretation.

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Defining the concept of extraterritoriality from an economic and legal perspective: a key issue in relations between Asia and Europe

Extraterritoriality, both official and unofficial, is defined as the prescriptive application of a country's laws beyond its territorial borders (official) and as the exercise of influence without a regulated framework but with directly or indirectly perceptible effects (unofficial). Faced with increased strategic competition and weakened multilateral diplomacy, states are increasingly resorting to this practice **to protect and promote their interests**.

It is therefore both a lever of power and an increasingly entrenched geo-economic *trend* that raises questions, particularly in terms of its violation of the principle of sovereignty that underpins modern states and the desire of certain powers (China, the United States, but others too) to engage in overt interference, most often legitimized by law.

China currently offers the most advanced version of this approach. Under the guise of national security, Beijing is extending the scope of its public law to Chinese nationals—and even foreigners—living in Hong Kong or on the mainland. This unilateral logic, justified by a public order imperative defined by the Party-State, embodies a new form of unofficial extraterritoriality: an instrument of power projected under the guise of law. But extraterritoriality is not just a legal phenomenon: it is also economic.

In Xi Jinping's China, it is at the heart of a geo-economic strategy where capital, subsidies, and licenses replace conventional weapons. Export controls, the discretionary revocation of licenses, and sanctions imposed on foreign companies reflect a diplomacy of economic coercion. European companies are often the first victims, caught between their local obligations and political reprisals decided in Beijing.

The law of October 17, 2020¹⁷, adopted at the 13th National People's Congress, details the extent of this strategy. It requires prior authorization for any technology export deemed strategic.¹⁸ Presented as a matter of national security during discussions on the sale of ByteDance to American players (notably Microsoft, Oracle, and Walmart), it signals the shift from a reactive China to a normative China. The law becomes an instrument of foreign policy, shaping an environment where digital sovereignty, industrial control, and technological power converge. This is how the logic of lawfare—warfare through the law—takes hold. It is a strategy of coercion that aims less at *conquering territory* than at *shaping the rules of the game*. In this invisible battlefield, the law becomes the functional equivalent of force: a means of domination without firing a single shot.

Extraterritoriality thus acts as a two-sided mirror. On the one hand, it allows states to defend their vital interests when multilateral frameworks prove powerless, implicitly reflecting their economic strategy. On the other hand, it becomes an offensive weapon: an instrument of lawfare designed to weaken an adversary's industrial power under the guise of legality.

Lawfare (warfare through the law) is therefore a normative geo-economic strategy of circumvention that allows states to impose their rules beyond their territory under the guise of legality.

17 Export Control Law of the People's Republic of China (中华人民共和国出口管制法), adopted by the Standing Committee of the 13th National People's Congress at its 22nd session on October 17, 2020, Presidential Decree No. 58, effective December 1, 2020

18 The Congressional Research Service report mentions that China has indicated that it could apply its export control laws to block a divestiture of ByteDance from divesting TikTok." (source: <https://www.congress.gov/crs-product/R48023?utm>).

The European Union portal explains it very well¹⁹ , describing it as "strategic judicialization" aimed at "establishing, perpetuating, or reversing a balance of power in order to coerce an adversary." Thus, the proliferation of international lawsuits and increased media coverage of conflicts go hand in hand with the systematization of extraterritorial laws, further blurring the line between "legality and legitimacy."

Once the concept of extraterritoriality has been placed in the broader context of war by law, it becomes necessary to question its strategic significance for the European Union. As Institut Montaigne, pointed out in a March 2024 report, extraterritoriality is no longer just a legal tool: it is becoming an instrument of political coercion. The fear is clear: that certain powers, China in particular, will use it to exert targeted pressure on vital sectors. The value chains of rare earths, active pharmaceutical ingredients, and electronic components are all potential levers of dependence. Beijing could use them to condition access to its resources or restrict exports as a form of retaliation. This risk reveals a blind spot in European strategic thinking: **the absence of a doctrine to deal with the normative war that is taking shape.**

The economic security strategy published by the Commission in June 2023 offers the most obvious proof of this: the word extraterritoriality does not appear in it.

This raises the central question: what can be done about this growing use of law as a weapon of power? Asian extraterritoriality, which has become a tool of economic and political coercion, is testing the European Union's ability to defend its sovereignty. Can it still afford to remain on the sidelines, or will it, in turn, have to build a response framework capable of competing on the very terrain of law?

China and extraterritoriality: implications and challenges for Europe

As mentioned above, between 2020 and 2021, Beijing has increased the number of laws strengthening its ability to retaliate – or to coerce. Behind a discourse of defense against US sanctions, these laws provide the Party-State with a legal basis for action that goes far beyond simple retaliation: they pave the way for the offensive application of Chinese law against third parties, particularly European ones. Article 7 of the revised Foreign Trade Law sums up the spirit of this approach: "If a country or region applies restrictive or discriminatory measures against the People's Republic of China, China may take appropriate countermeasures"²⁰ . In other words, the law becomes the codified extension of sovereignty. It is in this context that the Nuctech case emerges: an emblematic case where the confrontation between Chinese and European law reveals the extraterritorial scope of the new legal system built by Beijing.

The Nuctech case marks a turning point. For the first time, a Chinese company has invoked its country's law to refuse to respond to a request for information from the European Commission. Beijing justifies this refusal by invoking the extraterritorial application of its own law, while Brussels sees it as an obstacle to the regulation of the single market. Behind this administrative conflict lies a regulatory battle: Chinese law versus European law.

This standoff is rooted in the **"data security" law adopted in 2021** by the Standing Committee of the National People's Congress. This text enshrines digital sovereignty as a pillar of national security. It regulates the collection, processing, and dissemination of data on Chinese territory, but also, and this is the key point, its transfer abroad. Officially, the aim is to protect Chinese citizens and companies in response to the US *CLOUD* Act of 2018, which allows Washington to demand data stored outside the United States. In practice, China has equipped itself with a legal tool with extraterritorial reach, enabling it to impose its control beyond its borders.

¹⁹ <https://www.portail-ie.fr/univers/droit-et-intelligence-juridique/2024/droit-et-strategie-comprendre-lart-du-lawfare/>

²⁰ "In the event that any country or region applies prohibitive, restrictive or other like measures on a discriminatory basis against the People's Republic of China in respect of trade, the People's Republic of China may, as the case may be, take counter-measures against the country or region in question. (source: <https://www.caea.gov.cn/english/n6759372/c6793482/content.html?utm>)

Article 36 summarizes its scope: no data may be transmitted to a foreign authority without prior authorization from Beijing²¹. It was this provision that *Nuctech*, a manufacturer of security scanners, invoked in 2024 to refuse to transmit documents to the European Commission. In response, Brussels ordered searches of its subsidiaries in the Netherlands and Poland, provoking Beijing's anger and revealing **the fragility of the Sino-European dialogue on digital regulation.**

This law goes far beyond the management of data flows: it organizes a hierarchical control of information. "*Core state data*"—considered vital to national security and industrial growth—is prohibited from export. "*Important data*" can only be transferred after audit and authorization. This system creates an opaque legal architecture, where the Central National Security Commission has quasi-discretionary power of interpretation.

For European companies operating in China, this uncertainty becomes a structural risk. The slightest transfer of information can now be considered **an infringement of Chinese sovereignty**. Article 2 even extends this constraint beyond national territory: the law applies to any data processing activity carried out abroad that could "harm China's interests."

This is where its truly extraterritorial scope and coercive power lie. This model, based on the absolute primacy of national security, is diametrically opposed to that of the European Union. Whereas the GDPR establishes transparency and privacy as cardinal principles, China favors centralization and control. Two worldviews clash: that of a digital space regulated by individual rights, and that of a cyberspace administered by the state.

The Nuctech case crystallizes this divergence. For the European Union, China's refusal to cooperate amounts to economic obstruction; for Beijing, it is a legitimate application of its legal sovereignty. The result is a growing fragmentation of global cyberspace, with each power seeking to impose its own standards.

In this context, European companies are becoming the first victims of the regulatory war. They are operating in a legal maze where laws overlap, contradict each other, and extend beyond their borders. Should they split up their activities, fragment their value chains, and adapt their models to each legal zone ? The question is no longer theoretical: it determines the very viability of their international presence.

Faced with the rise of Chinese law, the European Union remains on the defensive. Without a common framework for response, without a clear doctrine on extraterritoriality, it risks being condemned to submit to the rules of others. The legal war is no longer being fought only in Washington; it is now also being written in Beijing. And Brussels, still a spectator, will sooner or later have to choose whether it wants to participate or suffer, as numerous reports on the subject point out²².

Dense and complex geo-economic relations: between strategic dependencies, protectionism, and regulatory ambitions

The relationship between the European Union and Asia is now part of a geo-economy of law. As the trade war is coupled with a regulatory war, extraterritoriality is becoming the battleground where political models and conceptions of sovereignty clash.

Europe finds itself in a paradoxical position: dependent on its Asian partners and, at the same time, determined to preserve its strategic room for maneuver.

²¹ Nuctech argued that providing data located in China to the EU could violate the DSL (and potentially the Personal Information Protection Law of the People's Republic of China) in its legal appeals
(source:<https://curia.europa.eu/juris/document/document.jsf?cid=16767851&dir=&docid=297265&doclang=EN&mode=lst&occ=first&pageIndex=0&part=1&text=&utm>)

²² Institut Montaigne, "Chinese Extraterritoriality: The New Legal Arsenal," 2024

The American episode of the blocking regulation (1996) already illustrated this fragility. Designed to protect European companies from the American "

at the same time, determined to preserve its strategic room for maneuver. The American episode of *the blocking statute* (1996) already illustrated this fragility. Designed to protect European companies from US sanctions related to Cuba or Iran, it revealed the Union's limited ability to resist the legal power of others. Since then, China has taken up the torch of extraterritoriality, transforming the law into an instrument of foreign policy, and Europe once again finds itself on the defensive. Admittedly, the Anti-Coercion Instrument (ACI)²³, adopted in 2023, marks a step forward. It authorizes retaliation in the face of overt economic pressure: embargoes, restrictions, declared sanctions. But it remains blind to more subtle forms of *lawfare*: forced data transfers, technological blockades, industrial dependencies. China, as an emerging normative power, exploits precisely these gray areas.

Hence the question now being debated in Brussels: should the EU be given a real offensive arm? **In one of its reports, available [here](#), Institut Montaigne argues for the creation of a "European OFAC,"** modeled on the US agency that oversees international sanctions. Such a mechanism would deter coercive measures targeting European companies outside the EU. In the same vein, the European Parliament is calling for greater coordination between Member States to respond to conflicts of jurisdiction caused by China or the United States.

To exert influence, Europe can rely on its main strength: the size of its internal market. Its power of attraction already makes the EU a de facto global regulatory power. The GDPR²⁴, the MiFID II directive²⁵, and the DSA and DMA regulations²⁶ impose standards on foreign players that apply well beyond European territory. This "legal soft power" could become, if embraced, an instrument of sovereignty: a form of reverse extraterritoriality, based not on coercion but on adherence.

However, this normative power comes up against the reality of dependencies. China and other Asian economies remain indispensable for rare earths, active pharmaceutical ingredients, electronic components, and critical materials. Europe cannot therefore afford a sudden decoupling: it must balance protection and interdependence, resistance and cooperation.

This opens up two paths. The first is to (i) build autonomous financial and legal capacity, for example through a European Export Bank capable of financing non-dollar trade and reducing exposure to US law. (ii) The second: diversify partnerships in Asia—from Japan to South Korea to the emerging economies of ASEAN—to prevent Beijing from becoming the continent's sole interlocutor.

The EU thus finds itself at a crossroads. Between regulatory power and strategic vulnerability, between economic dependence and legal assertiveness, it must decide whether it wants to suffer the legal war—or participate in it. For in the new international order, the norm has become the frontier. And sovereignty is now written in articles of law.

²³ The Anti-Coercion Instrument (ACI) is a European Union regulation adopted on December 27, 2023 (Regulation (EU) 2023/2675, OJ L 2023/2675 of December 27, 2023). It creates a legal framework enabling the EU to respond collectively to acts of economic coercion committed by third countries.

²⁴ The GDPR (Regulation (EU) 2016/679) establishes the European legal framework for the protection of personal data.

²⁵ MiFID II (Directive 2014/65/EU) regulates investment services and the functioning of European financial markets. It imposes increased obligations on financial service providers in terms of transparency, investor protection, and reporting. It aims to strengthen market stability, competition, and supervision (source: [Official Journal of the European Union](#)).

²⁶ The DSA (Digital Services Act), or Regulation (EU) 2022/2065, establishes rules on the responsibility and transparency of online platforms (hosting providers, social networks, marketplaces). It imposes obligations on moderation, traceability, and control of digital content. The DMA (Digital Markets Act), or Regulation (EU) 2022/1925, aims to regulate large "gatekeeper" platforms (Google, Apple, Meta, etc.) to ensure fair competition and prevent abuse of dominant positions (source: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32022R2065>).

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