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SYMPOSIUM ON EXPLORING EXTRATERRITORIALITY'S EMPIRE

EXTRATERRITORIAL ECONOMIC COERCION THROUGH AGREEMENTS

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Evan J. Criddle's recent article, *Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Lawmaking*, highlights a contemporary challenge in international law.[1] Focusing on unilateral legislation in domains including antitrust enforcement, data governance, and the regulation of political expression, he examines the "new imperialism" at work in extraterritorial practices.[2] His central argument is that the right to self-determination constrains states' extraterritorial lawmaking.[3]

Building on Criddle's analytical insights, this essay advances two interrelated claims. First, it moves beyond the traditional domain of domestic legislation by shifting the focus to contemporary trade agreements.[4] The economic measures incorporated in these agreements are often designed to compel target states to alter their existing policies—a form of extraterritorial economic coercion. This is a broad concept that encompasses, and at times overlaps with, economic sanctions, which seek to disrupt customary trade or financial relations.[5] Second, the essay exposes the practical limitations of Criddle's self-determination framework in the modern context. While self-determination provides a compelling normative critique of extraterritorial overreach, it proves difficult to operationalize as a meaningful constraint on certain types of state coercion. Accordingly, strengthening alternative mechanisms such as multilateral economic institutions is necessary to confine emerging forms of economic coercion.

Extraterritorial Protection of Human Rights and Imperialism

Extraterritoriality has long been linked with efforts to protect human rights. Consider, for example, the "unequal treaties" by which Western powers applied domestic law extraterritorially.[6] A cardinal case is the Treaty of Wanghia, the first unequal treaty concluded between China and the United States in 1844. The Treaty extended consular jurisdiction from disputes between American and Chinese nationals to disputes between Americans and non-Chinese nationals.[7] Chinese courts were thus deprived of jurisdiction over cases involving Americans. Yet even this extreme form of extraterritoriality arguably implicates the protection of human rights, as it was intended

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[1] Evan J. Criddle, *Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Lawmaking*, 118 AJIL 607 (2024).

[2] *Id.* at 620–48.

[3] *Id.* at 609.

[4] Barry E. Carter, *Economic Coercion*, MAX PLANCK ENCYCLOPEDIA PUB. INT'L L., paras. 1–2 (Sept. 2009).

[5] Jonathan Masters, *What Are Economic Sanctions?*, COUNCIL FOR. REL. (Jun. 24, 2024).

[6] Criddle, *supra* note 1, at 615–16; Hungdah Chiu, *Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties*, *in* CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES 239, 241–46 (Jerome Alan Cohen ed., 1972).

[7] Treaty of Peace, Amity, and Commerce, Between the United States of America and the Chinese Empire, Art. 25 (1844).

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to protect U.S. nationals from being subjected to the "uncivilized" Chinese criminal proceedings, which often relied on forced confessions obtained through torture.

The difficulty, of course, is that this type of extraterritoriality is associated with imperialist implications, generating long-standing tension between the Global North and the Global South over whether, how, and by what standards human rights should be enforced through extraterritorial agreements. Today, these debates are relevant in connection with trade agreements. The European Union (EU), for instance, has promoted a trade and investment agenda linked to human rights. Developing country trade partners, however, often perceive such linkages as a form of economic coercion. Thus, debates over human rights obligations under modern-day agreements hinge on whether they constitute "benevolent imperialism" or "paternalistic economic coercion."[8]

Sanctions Through Economic Agreements: The EU Case

Under the mandate of the Treaty of Lisbon to universalize European values, the EU has incorporated the protection of human rights into its trade and investment schemes.[9] This legal regime therefore provides a useful case study for examining evolving extraterritorial human rights protections and the risk of coercion—especially as implemented in Southeast Asian countries with a colonial legacy. The results demonstrate the limited utility in this context of the right to self-determination as a limit on extraterritorial coercion.

Brussels has resorted to a multifaceted sanctions toolkit to address human rights violations. One important enforcement mechanism is the withdrawal of tariff preferences under the Generalized Scheme of Preferences (GSP) to penalize beneficiary countries.[10] For example, in response to the Hun Sen government's persecution of opposition parties and leaders, the EU partially suspended Cambodia's privileges under the duty-free GSP scheme known as "Everything But Arms."[11]

Myanmar's military coup and the subsequent detention of Aung San Suu Kyi in 2021 constitute another key episode. The EU intensified its sanctions on Myanmar's junta regime by targeting 106 individuals and 22 entities, imposing measures ranging from travel bans to export restrictions.[12] Although these sanctions represent a form of economic coercion, they may not implicate a violation of the right to self-determination, as the "peoples" living under oppressive regimes would resist the suppression of their fundamental human rights.

The right to self-determination is also challenging to operationalize when addressing human rights conditionality in EU Free Trade Agreements (FTAs) and Partnership and Cooperation Agreements (PCAs), which are other forms of agreements that are closely intertwined with and aim to facilitate cooperation on human rights. EU economic agreements with Singapore and Vietnam illustrate these concerns about human rights enforcement through economic coercion. These agreements form the foundation for a potential EU-Association of Southeast Asian Nations (ASEAN) FTA.

[8] Criddle, *supra* note 1, at 650; Elena Chachko & Abraham Newman, *Building Norms of Economic Coercion*, 28 J. INT'L ECON. L. 542, 549–54 (2025).

[9] European Commission, Trade for All: Towards a More Responsible Trade and Investment Policy, at 22–23 (2015); Consolidated Version of the Treaty on the Functioning of the European Union, Arts. 205, 207(1), Oct. 16, 2012, 2012 OJ (C 326) 47; Consolidated Version of the Treaty on European Union, Arts. 3(5), 21(3), Oct. 26, 2012, 2012 OJ (C 326) 13.

[10] European Parliament, The Generalised Scheme of Preferences Regulation (No 978/2012): European Implementation Assessment, at 13 (2018).

[11] European Commission, Cambodia Loses Duty-Free Access to the EU Market Over Human Rights Concerns (Aug. 12, 2020).

[12] European Council & Council of the European Union, Sanctions Against Myanmar (Apr. 25, 2025).

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Despite Vietnam's remarkable economic growth, the Communist Party continues to dominate the political system, and restrictions on political rights and civil liberties have led Freedom House to classify the country as "not free."[13] Singapore is governed by a ruling party that holds eighty-seven of eighty-nine parliamentary seats, and its allegedly "partly free" system has been criticized for limiting "freedoms of expression, assembly, and association."[14]

New FTAs fall within the EU's exclusive competence and therefore qualify as "EU-only" agreements. By contrast, PCAs are "mixed" agreements that require ratification not only by the European Parliament but also by the parliaments of all twenty-seven member states.[15] As these parliaments represent EU citizens, European values such as the protection of human rights are expected to be underscored in these agreements. Consistent with this, the EU's mandate requires the conclusion of a PCA with enforceable human rights provisions as a prerequisite to an FTA.

Both Singapore and Vietnam have concluded PCAs with the EU, and their FTAs provide that the PCAs "shall form part of a common institutional framework."[16] The PCAs further stipulate that respect for international human rights constitutes "an essential element," entitling a party to take "appropriate measures" in response to any violation of that obligation.[17] While both PCAs require consultations to determine such measures, the EU-Singapore PCA's non-execution mechanism enables the suspension of the FTA in "exceptional cases of systemic, serious and substantial" violations.[18]

However, the EU's enforcement of human rights obligations by potentially suspending FTAs may run counter to the right to self-determination. According to Criddle, extraterritoriality can be justified as not contravening the right to self-determination if foreign law incorporates international norms or if such norms rise to the level of customary international law.[19] Fundamental rights, including the right to self-determination, are incorporated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[20]

EU institutions adopted a more stringent position toward the EU-Vietnam FTA due to human rights concerns. The European Ombudsman found that the European Commission's failure to conduct a specific human rights assessment "constituted maladministration." The European Parliament also voiced grave concerns regarding Vietnam's Cybersecurity Law, the death penalty, and political persecution. As Vietnam has ratified both the ICCPR and the ICESCR, it can be argued that Vietnamese law is obliged to incorporate the human rights

[13] Freedom House, *Vietnam* (last visited Dec. 18, 2025).

[14] *Id.*; Bryanna Entwistle, *Singapore's Ruling Party Wins, But the Opposition Is Here to Stay* (last visited Dec. 18, 2025).

[15] David Kleimann & Gesa Kübek, *The Signing, Provisional Application, and Conclusion of Trade and Investment Agreements in the EU: The Case of CETA and Opinion 2/15*, 45 Legal Issues Econ. Integration 13, 22–24 (2018).

[16] Free Trade Agreement Between the European Union and the Republic of Singapore, Art. 16.18.1, Oct. 19, 2018, 2019 OJ (L 294) 3 [hereinafter EU-Singapore FTA]; Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam, Art. 17.22.2, June 30, 2019, 2020 OJ (L 186) 3 [hereinafter EU-Vietnam FTA].

[17] Partnership and Cooperation Agreement Between the European Union and Its Member States, of the One Part, and the Republic of Singapore, of the Other Part, Arts. 1, 44, Oct. 19, 2018, 2018 OJ (L 189) 3 [hereinafter EU-Singapore PCA]; Partnership and Cooperation Agreement Between the European Union and Its Member States, of the One Part, and the Socialist Republic of Viet Nam of the Other Part, Arts. 1, 57, June 27, 2012, 2016 OJ (L 329) 8 [EU-Vietnam PCA].

[18] EU-Singapore PCA, *supra* note 17, Arts. 9(2), 44(4) & Joint Declaration on Article 44 (Non-execution of the Agreement); EU-Vietnam PCA, *supra* note 17, Art. 57(4).

[19] Criddle, *supra* note 1, at 635.

[20] International Covenant on Civil and Political Rights, Art. 1, Dec. 16, 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, Art. 1, Dec. 16, 1966, 993 UNTS 3.

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norms contained in them. Hence, the EU's enforcement of such rights extraterritorially is consistent with the right to self-determination.

Singapore's case is different, as it has neither signed nor ratified the two covenants. In other words, the EU's enforcement of human rights that have yet to rise to the level of customary international law, such as procedural fair trial rights and minority rights, may be alleged to violate the right to self-determination and therefore cannot justify extraterritoriality. Arguably, Brussels sought to strike a balance and bring the FTA-human rights linkage more closely into line with the right to self-determination. With respect to the potential invocation of the PCA mechanism that may suspend the FTA, both sides agreed on a side letter, which "shall form an integral part of the" PCA.[21]

Pursuant to the side letter, neither side is aware "of any of each other's domestic laws, or their application, which could lead to the invocation of" the non-execution mechanism. In essence, the side letter to the FTA avoids the extraterritorial reach of "European" human rights. This example also reinforces my argument that the right to self-determination alone, without additional procedural safeguards, cannot effectively constrain extraterritoriality.

Emerging Challenges of Economic Coercion

Although the right to self-determination is an important principle, it does not provide pragmatic constraints on extraterritorial economic coercion through trade agreements. Multilateral frameworks to "discipline" economic coercion and sanctions ought to be indispensable. However, economic measures often either originate outside multilateral frameworks or are difficult for them to address, given the limited jurisprudence on evolving forms of such measures.[22]

Economic sanctions may be imposed outside United Nations Security Council-authorized measures, as exemplified by U.S. and EU sanctions against China and Russia.[23] Small states with economic clout may also impose sanctions against major powers to uphold key principles, including territorial sovereignty and the prohibition on the use of force. For instance, in response to Russia's invasion of Ukraine, Singapore is the only ASEAN country to have imposed export controls and financial measures targeting Russia and the breakaway regions of Donetsk and Luhansk.[24] The duration and extraterritorial reach of these unilateral sanctions extend beyond established international legal frameworks.[25]

Compounded by the paralysis of the Appellate Body and multiple challenges related to security exceptions, the World Trade Organization (WTO) has proven incapable of addressing new forms of economic coercion. A recent illustrative case is *China – Measures Concerning Trade in Goods*, in which the EU brought a complaint against China's restrictions on goods originating in or transiting through Lithuania.[26] Following Lithuania's

[21] EU-Singapore PCA, *supra* note 17, Art. 50; Side Letter.

[22] *See* notes 33–34 *infra* and accompanying text.

[23] Masters, *supra* note 5; Yue Zhao & Han-Wei Liu, *Lawfare's New Frontier: International Commercial Arbitration in the Shadow of Sanctions*, 59 VAND. J. TRANSNAT'L L. __, Pt. I (forthcoming 2026).

[24] *ASEAN Speaks Out Against Russia's Invasion of Ukraine – Singapore Issues Sanctions and Restrictions in Relation to Russia*, DENTONS RODYK (Mar. 7, 2022).

[25] Masters, *supra* note 5.

[26] China – Measures Concerning Trade in Goods and Services: Request for Consultations by the European Union, at 1, WTO Docs. WT/DS610/1, G/L/1426, G/TFA/D4/1, G/SPS/GEN/1988, S/L/435 (Jan. 31, 2022).

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permission in 2021 to allow the establishment of the "Taiwanese Representative Office" in Vilnius, rather than the commonly used designation "Taipei" for *de facto* embassies, Lithuanian exports faced abnormal disruptions in trade with China.[27]

Trade obstacles included the cancellation of contracts and export permits, and Lithuania was removed from the customs system, rendering customs clearance infeasible. Akin to the extraterritoriality of secondary sanctions affecting third states, European auto parts manufacturers and multinational companies were pressured not to incorporate Lithuanian components or risk losing access to the Chinese market.[28] In 2020, Brussels brought a complaint against Beijing, and the panel was constituted in 2023.[29] However, the EU requested a suspension of the proceedings in 2024 and, one day after their resumption in 2025, again requested the panel to suspend its work.[30]

The primary factor driving this decision is the high evidentiary threshold required for China's unwritten rule or norm to be considered a "measure" subject to WTO challenge.[31] Appellate Body jurisprudence would require the EU to prove that the rule or norm is "attributable to" China, has "precise content," and has "general and prospective application." Brussels's justification for abandoning the case on the grounds that "the main objectives of the dispute were achieved, and the relevant trade has resumed" underscores the weakness of WTO agreements in addressing novel forms of economic coercion.[32] The EU's passive stance has also left its Anti-Coercion Instrument untested. This demonstrates how strong extraterritorial measures may remain unchecked due to the absence of a robust multilateral framework.

Trump 2.0 Agreements

In recent years, geopolitical conflicts and hegemonic instability have further undermined the effectiveness of existing multilateral mechanisms. Under the "America First" policy, Trump 2.0's agreements on reciprocal trade (ARTs) resemble modern unequal treaties.[33] Departing from the "values"-based FTAs traditionally advocated by the EU and the United States, these new ARTs reflect the transactional nature of the Trump administration. By leveraging asymmetrical bargaining power through formally bilateral instruments, the United States deprives *consent* of meaningful substance. This practice underscores why Criddle's right-to-self-determination framework cannot effectively discipline contemporary forms of extraterritoriality.

Compared with the Economic Prosperity Deal with the United Kingdom, the ARTs with Cambodia and Malaysia in 2025 symbolize "unequal treaties" that contravene the principle of non-intervention on which the right to self-determination is premised. The ARTs include rare coercive provisions, such as unilateral MFN

[27] Fergus Hunter et al., *Countering China's Coercive Policy: Prioritising Economic Security, Sovereignty and the Rules-Based Order*, AUSTRALIAN STRATEGIC POL'Y INST., at 11–14 (Policy Brief Report No. 68/2023, 2023); Pasha L. Hsieh, *Beyond Non-recognition: U.S.-Taiwan Trade Agreements in Indo-Pacific Dynamics*, 47 U. PA. J. INT'L L. 1, 71–74 (2025).

[28] Hunter et al., *supra* note 27, at 13; William Yuen Yee, *China-Lithuania Tensions Boil Over Taiwan* (Jan. 28, 2022).

[29] DS610: China – Measures Concerning Trade in Goods (last visited Dec. 20, 2025).

[30] China – Measures Concerning Trade in Goods: Suspension of Panel Work, WTO Doc. WT/DS610/12 (Jan. 26, 2024); China – Measures Concerning Trade in Goods: Suspension of Panel Work, WTO Doc. WT/DS610/13 (Jan. 30, 2025).

[31] *See* PETER VAN DEN BOSSCHE & WERNER ZDOUC, THE LAW AND PRACTICE OF THE WORLD TRADE ORGANIZATION: TEXT, CASES, AND MATERIALS 184 (5th ed. 2021).

[32] Augustas Stankevičius, *EU Withdraws WTO Case Over China's Trade Restrictions on Lithuania, Vilnius Backs Decision*, LITHUANIA RADIO & TELEVISION (Dec. 2, 2025).

[33] White House, National Security Strategy of the United States of America, at 8–13 (Nov. 2025).

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treatment for services commitments and mandates to "follow" U.S. trade measures on labor, sanctions, and national security targeting a "third country."[34]

What raises significant extraterritorial concerns are the so-called "poison pill" clauses, first seen in the Agreement between the United States of America, the United Mexican States, and Canada (USMCA). The clause allows an FTA to be terminated if a party enters into FTA negotiations with a "non-market economy," implicitly referring to China.[35] Unlike the USMCA, which provides procedural safeguards, the two ARTs grant Washington discretion to terminate the agreements if in its sole judgment they "jeopardize" or "undermine" U.S. essential interests.[36]

Moreover, the ARTs impose consultation requirements with the United States for Malaysia's and Cambodia's new digital trade agreements.[37] Notably, as the largest ASEAN economy, Indonesia's resistance to U.S. demands for poison pill clauses once stalled bilateral ART negotiations.[38] This resistance stems from concerns over intrusions into sovereignty when dealing with third states, particularly because these rules could potentially inhibit the ASEAN-China FTA 3.0 upgrade and the intra-ASEAN Digital Economy Framework Agreement. The mechanisms of the ARTs clearly inhibit the sovereignty of trade partners, and these cases likewise demonstrate the limitations of the right to self-determination in restraining extraterritoriality.

Conclusion

This essay builds on and extends Criddle's right to self-determination framework to examine extraterritorial economic coercion through international agreements and identify its central limitations in contemporary practice. Although self-determination provides a powerful normative critique of extraterritorial legislation, it is pragmatically difficult to operationalize as a constraint when coercion is mediated through agreements. Contested human rights claims render self-determination indeterminate, while innovative forms of economic coercion render existing multilateral mechanisms ill-suited to address them. Moreover, power asymmetries, most evident in recent ARTs, further hollow out meaningful consent. Given that the right to self-determination alone cannot discipline these evolving forms of economic coercion, strengthening multilateral economic mechanisms remains essential to closing this gap.

[34] Agreement Between the United States of America and Malaysia on Reciprocal Trade, Arts. 2.7, 2.9, 5.1 (Oct. 26, 2025) [hereinafter U.S.-Malaysia ART]; Agreement Between the United States of America and the Kingdom of Cambodia on Reciprocal Trade, Arts. 2.6, 2.8, 5.1, 5.2 (Oct. 26, 2025) [hereinafter U.S.-Cambodia ART].

[35] United States of America, the United Mexican States, and Canada, Art. 32.10 (Nov. 30, 2018) [hereinafter USMCA].

[36] U.S.-Malaysia ART, *supra* note 34, Art. 5.3.3; U.S.-Cambodia ART, *supra* note 34, Art. 5.3.3.

[37] U.S.-Malaysia ART, *supra* note 34, Art. 3.3; U.S.-Cambodia ART, *supra* note 34, Art. 3.3.

[38] Sebastian Strangio, *Indonesia-US Trade Agreement at Risk of Collapse, Report Claims*, THE DIPLOMAT (Dec. 11, 2025).

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