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Centre for Studies and Research in International Law and International Relations
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Extraterritoriality: Selective Bibliography

Raymond J.W. Ridderhof, Philipp L. Ullmer
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Introductory Note

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Directors of Research:

Prof. Hannah BUXBAUM (Indiana University Maurer School of Law)
Prof. Thibaut FLEURY GRAFF (University of Rennes 1)

In its famous “Lotus” judgment of 1927, the PCIJ held that “far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.” Nearly a century later, this discretion has been widely exercised by states, which have increasingly engaged in extraterritorial interventions—legislative, judicial, and even in connection with enforcement. The practice of the United States—in areas including access to electronic data stored abroad, the fight against corruption, the private enforcement of regulatory law, and sanctions for violation of embargoes—is illustrative, and has become a focal point for discussions of extraterritoriality. But it is only one example of such practices, which today invite us to examine in depth many aspects of international law, both public and private.

The question of extraterritoriality requires the examination, at a very general level, of the allocation of power among States. More specifically, it requires consideration of the factors that are likely (or not) to justify the extraterritorial scope of state action, particularly in areas involving transnational movements and flows (cybersecurity and cyber defense, human rights, migration, global cartels, global capital markets ...). The members of the 2019 Center will be able to conduct research on the character and limits of a State’s territorial jurisdiction, the traditional connecting factors linking a State’s authority to situations arising outside its borders, and the possibility of “extraterritorial



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regimes” in certain areas. They will also study conflicts of jurisdiction—judicial, legislative and / or enforcement—that may give rise to claims of extraterritoriality, as well as ways to prevent or resolve such conflicts. The question of the extraterritorial scope of international obligations will also be addressed. Lastly, a historical overview of the notion of extraterritoriality will enable us to place it within the context of international law’s development. In the course of our work, and with respect to all topics, we will emphasize concrete examples of extraterritorial action (national or international decisions, state practices, agreements, etc.).



Académie de droit international de La Haye
Centre d'étude et de recherche de droit international et de relations internationales
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L'extraterritorialité: bibliographie sélective

Raymond J.W. Ridderhof, Philipp L. Ullmer
Bibliothèque du palais de la Paix, La Haye

Note introductive

Cette bibliographie a été préparée sur la seule base des matériaux de la Bibliothèque du Palais de la Paix à l'usage des chercheurs du Centre d'étude et de recherche de droit international et de relations internationales de l'Académie de droit international de La Haye. L'information bibliographique d'origine, publiée en 2019, a été complétée jusqu'en 2020

Directeurs de recherche:

Prof. Hannah BUXBAUM (Indiana University Maurer School of Law)
Prof. Thibaut FLEURY GRAFF (University of Rennes 1)

Dans son célèbre arrêt « Lotus » de 1927, la CPJI jugeait que « loin de défendre d'une manière générale aux États d'étendre leurs lois et leur juridiction à des personnes, des biens et des actes hors du territoire, le droit international leur laisse, à cet égard, une large liberté, qui n'est limitée que dans quelques cas par des règles prohibitives ; pour les autres cas, chaque Etat reste libre d'adopter les principes qu'il juge les meilleurs et les plus convenables ». Près d'un siècle plus tard, cette liberté a été largement exploitée par les États, dont les interventions – législatives, judiciaires voire exécutives – extraterritoriales se sont multipliées. L'action des Etats-Unis, notamment en matière d'accès aux données numériques stockées à l'étranger, de lutte contre la corruption, d'application privée de la loi réglementaire ou de sanctions en cas de violation des embargos est topique à cet égard et a beaucoup fait parler d'elle, mais elle n'est qu'une illustration parmi d'autres de pratiques nombreuses, qui invitent aujourd'hui à interroger de manière approfondie de nombreux aspects du droit international, public et privé.

La question de l'extraterritorialité doit ainsi conduire à interroger, de manière très générale, la répartition des compétences entre Etats, et plus spécifiquement les éléments susceptibles de fonder – ou non – la portée extraterritoriale de certaines de leurs actions, en particulier dans certains domaines concernés par les mouvements et flux transnationaux (cybersécurité et cyberdéfense, droits de l'Homme, migrations, ententes mondiales et marchés mondiaux de capitaux...). Les membres du Centre 2019 pourront ainsi travailler, notamment, sur le contenu et les limites de la compétence territoriale de l'Etat, les éléments conventionnels ou coutumiers de rattachement à



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l'Etat de situations survenant hors de ses frontières et l'existence d'éventuels « régimes d'extraterritorialité » dans certains domaines. Les conflits de compétences – juridictionnelle, législative et/ou exécutive – que peuvent faire naître les prétentions extraterritoriales ainsi que les modes de prévention ou résolution de ces conflits devront également être étudiés. La question de la portée extraterritoriale des obligations internationales devra également être abordée. Enfin, un aperçu historique de la notion d'extraterritorialité devra permettre de la replacer dans la longue durée du droit international. Dans tous les cas et sur chaque thème, une grande importance sera accordée aux illustrations pratiques (décisions nationales ou internationales, pratiques étatiques, accords, etc.).



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