



**BALKAN CRIMINOLOGY RESEARCH FOCUS III:
Punishment and Sentence Enforcement
for Serious Violations of International
Humanitarian Law Committed in the
Former Yugoslavia**



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I. Introduction

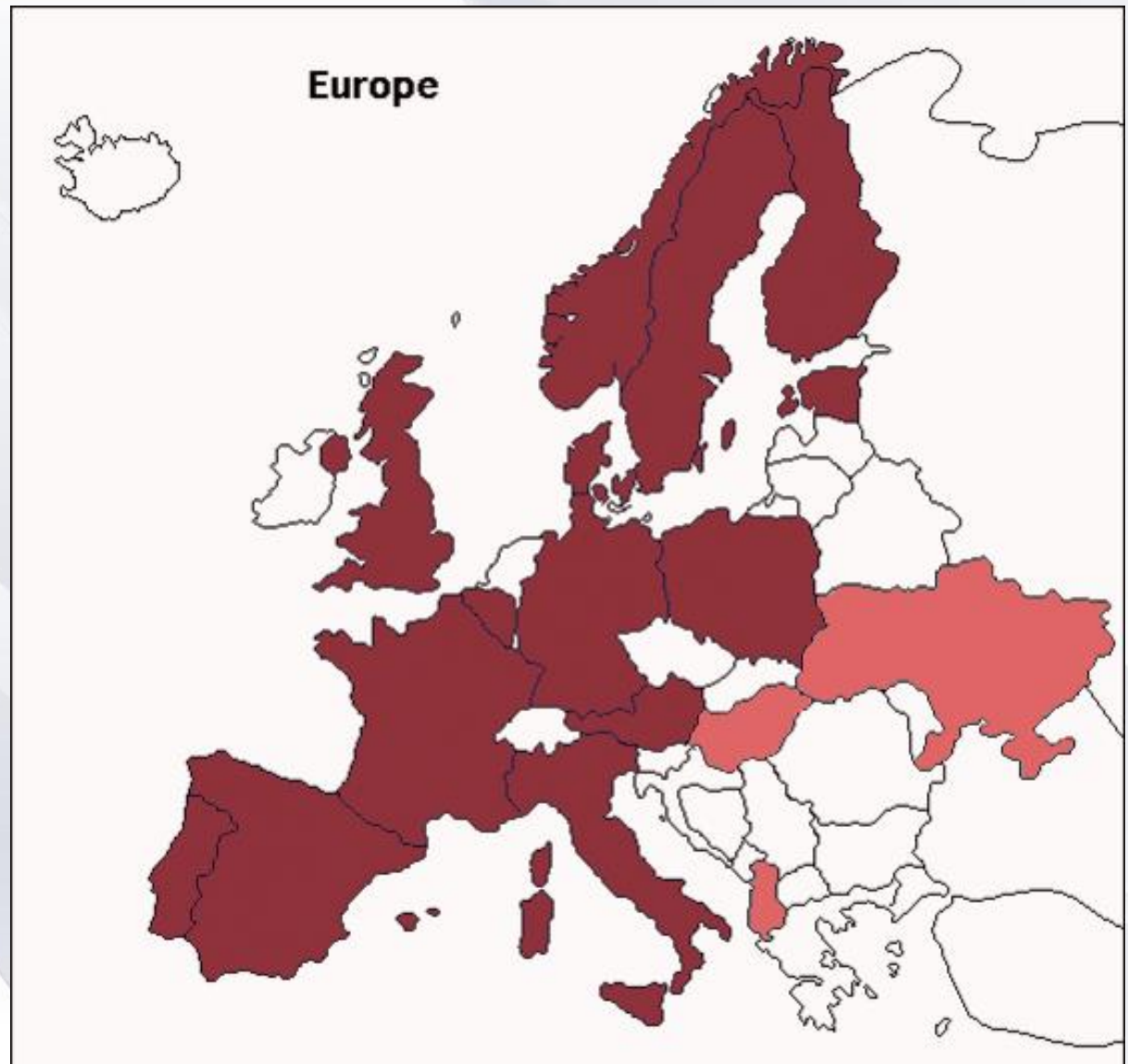


- ICTY Statute A. 27 – Enforcement of sentences in *national* prison systems based on ***“Agreements on the Enforcement of Sentences”***
- Subsequently adopted by other international criminal tribunals (ICTR, ICC, MICT)
 - 17 European states (Germany – 5 ad hoc agreements)
 - 14 effectively enforcing sentences
 - 54 prisoners



“The Hague Map of Europe”

State	No. of Prisoners
Austria	6
Italy	5
Spain	5
Finland	6
Norway	6
Denmark	4
France	4
Germany	5
UK	3
Sweden	4
Estonia	3
Belgium	1
Poland	1
Portugal	1





- **Normatively: Supervision** of enforcement by the **ICTY** (ICTY Statute, Erdemović judgement)
- **Practice:** Adjustment of **terms and conditions of imprisonment** to *national penal policies* (enforcement agreements)
- Issues of criminological and penological relevance



II. 1. Research Problems:

A. Purpose of Enforcement



- Opposed to ordinary criminals, perpetrators of international crimes do not deviate against the state policy, but act in conformity with it, or on behalf of it (Collective violence).
 - Criminal individual - “Criminal Collective”
 - Undermined value of “social reintegration”
- Aetiological traits of “Macro-Criminality” (Jaeger, 1989) are inherently different from conventional criminality.
 - “Ordinary people within extraordinary circumstances”
 - Ineffectiveness of conventional rehabilitation programmes



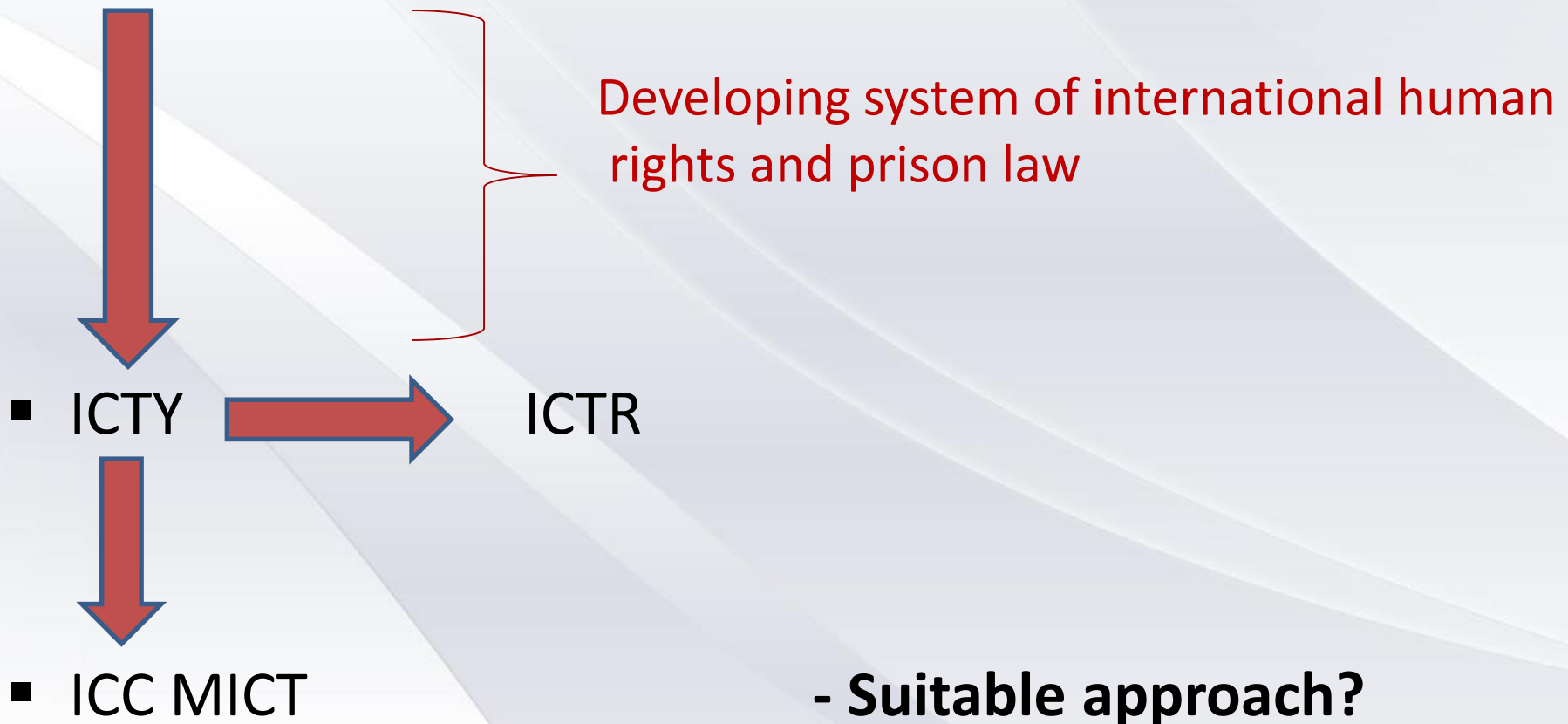


- **What works?**
- **Historic adoption of a symmetric approach to system criminality** - criminal law should strive to change the system which supports and enables mass atrocities through utmost desolidarization with the perpetrators (Rehabilitation of the society)



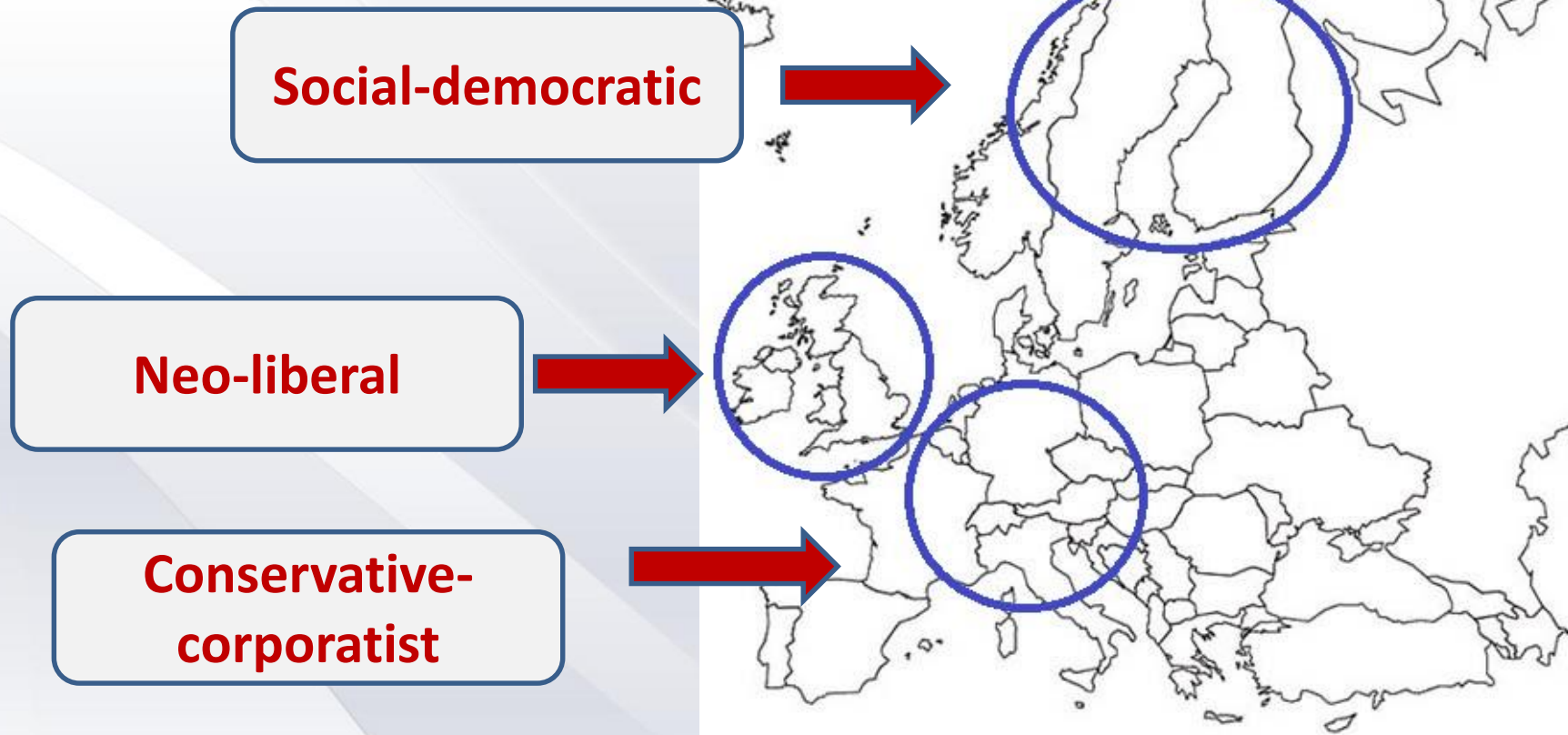
- Archetype:

Nuremberg trials, Spandau Prison - death penalties, imprisonment without parole, consolidation system [**victor's justice !**]



B. (In)Equality of Treatment

➤ STATE vis-a-vis STATE



➤ INTERNATIONAL PRISONERS vis-a-vis NATIONAL



C. Reconciliatory Effect



- Instrumental role of the system
- Expressivist role of the system

- Outcome: contribution to the restoration and maintenance of peace






II. 2. Research Questions



- Governing research questions:
 - **“What purpose(s) govern the enforcement of the ICTY sentences?”**
 - **“How are the ICTY sentences enforced through national prison regimes?”**
 - **“What are the outcomes of the enforcement?”**
- Place for the improvement?
- Methodology: Qualitative Content Analysis (legal documents, media reports)
Interviews, written/electronic correspondence



III. Methodology: Level of Analysis



INTERNATIONAL	MICT/ICTY	(Office of the President, Registry, Prosecutor)
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MACRO	STATE	(Government Institutions)
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MESO	PRISONS	(Directors, Prison Staff)
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MICRO	INDIVIDUALS	(Prisoners, Ex-Prisoners)
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IV. Data Indications: A Summary



- Conflicting set of penological principles
 - Not firmly established set of rules
 - Regulatory inconsistency
 - Discretionary decisions
 - Inequality & inadequate implementation
- **Diminished legitimacy!**





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Thank you
for your attention!

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